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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA, : 15-CR-637 (KAM)  
Plaintiff, :  
-against- : United States Courthouse  
MARTIN SHKRELI, : Brooklyn, New York  
Defendant. : Tuesday, July 25, 2017  
-----X : 9:00 a.m.

TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL  
BEFORE THE HONORABLE KIYO A. MATSUMOTO  
UNITED STATES DISTRICT JUDGE, AND A JURY

A P P E A R A N C E S:

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Proceedings recorded by Stenographic machine shorthand,  
transcript produced by Computer-Assisted Transcription.

*Proceedings*

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1           (The following takes place out of the presence of  
2 the jury.)

3           THE COURT: All right. Are the parties ready? Was  
4 there anything we needed to address before we got started?  
5 No?

6           (No response.)

7           (Pause in the proceedings.)

8           MR. AGNIFILO: Judge, do we have two seconds just to  
9 talk about scheduling?

10          THE COURT: Sure.

11          MR. AGNIFILO: What we think is we think we have a  
12 shot at finishing the case agent, direct and cross, today.

13          THE COURT: Oh, good.

14          MR. AGNIFILO: I guess it's possible, I think  
15 Ms. Kasulis has maybe another four hours, five hours.

16          MS. KASULIS: We have quite a few e-mails to read  
17 in, so that's all, it's just in terms of length of time for  
18 that but I'm hopeful we can get this done today.

19          MR. AGNIFILO: If I'm left with two hours, I think I  
20 can finish the cross, I mean I'm not promising but I'm trying  
21 to.

22          THE COURT: Okay.

23          MR. AGNIFILO: What I was wondering thinking forward  
24 is what Your Honor was thinking about in terms of Rule 29  
25 motions, you know, what makes sense in terms of the charge and

1 then summations.

2 THE COURT: How long do you think your Rule 29  
3 argument will be?

4 MR. AGNIFILO: Part of it depends on whether you  
5 would rather have something in writing, I mean if something  
6 was going to be in writing I couldn't write it until the end  
7 of the day. If Your Honor doesn't mind one way or the other,  
8 it might be a little longer in terms of the time in court but  
9 not super lengthy.

10 THE COURT: I'm happy to hear from you orally,  
11 that's fine.

12 MR. AGNIFILO: Okay.

13 THE COURT: Obviously if there's a need for  
14 post-trial briefings I would also allow that.

15 MR. AGNIFILO: Right, okay.

16 THE COURT: If that's how you want to proceed.

17 MR. AGNIFILO: Okay.

18 THE COURT: If you prefer to make a motion in  
19 writing, that's fine as well.

20 MR. AGNIFILO: Okay.

21 THE COURT: Just one moment.

22 (Pause.)

23 MR. AGNIFILO: So, what we were thinking just among  
24 ourselves is if we did finish today or even if we spilled over  
25 I guess until tomorrow morning, we could do the Rule 29

1 tomorrow morning.

2 THE COURT: Yes.

3 MR. AGNIFILO: Then I was wondering what Your Honor  
4 was thinking about a charge conference.

5 THE COURT: I was hoping we could have the charging  
6 conference tomorrow, we were going to post the charges by this  
7 evening.

8 MR. AGNIFILO: Okay.

9 THE COURT: They're almost finished, we were just  
10 awaiting some additional clarifications on some of the charges  
11 but I think we'll be able to post them this evening or this  
12 afternoon and so we could charge in the afternoon.

13 MR. AGNIFILO: Okay.

14 THE COURT: And then have closing argument on  
15 Thursday.

16 MR. AGNIFILO: That's fine.

17 MS. KASULIS: I think that's what we were --

18 THE COURT: Charge the jury, depending on how long  
19 you're going to go, the charges will take a couple of hours  
20 because they're close to 90 some odd pages, right.

21 MR. AGNIFILO: Right, right. Okay.

22 THE COURT: Then we would send the jury to  
23 deliberate hopefully by Thursday afternoon or Friday, they'll  
24 have Friday and continue into the following week.

25 MS. KASULIS: So, Thursday would be for closings.

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1 THE COURT: Right.

2 MS. KASULIS: I think that's what we discussed.

3 MR. AGNIFILO: That's perfect. Thank you, Judge.

4 THE COURT: All right. And I'm hoping you won't  
5 need too much time to review the charges, I mean they are  
6 lengthy but a lot of it is standard.

7 MR. AGNIFILO: If we have overnight that's more than  
8 enough time.

9 MS. KASULIS: Same for the government.

10 THE COURT: Okay, good.

11 MR. AGNIFILO: Thank you, Judge.

12 THE COURT: Just so you know, counsel, the jurors  
13 wanted to leave vacant the seat formerly occupied by Juror  
14 Number 14, they're comfortable where they are.

15 MR. AGNIFILO: They want to leave 14 vacant.

16 MR. BRAFMAN: As a memorial?

17 THE COURT: It's a retired seat.

18 MR. AGNIFILO: It's Elijah's seat.

19 (Jury enters courtroom.)

20 THE COURT: Good morning, members of the jury. All  
21 are present, and please have a seat, everybody.

22 (Witness takes the stand.)

23 THE COURT: Special Agent Braconi, you're still  
24 under oath, and if you'd like to resume your examination.

25 MS. KASULIS: Thank you, Your Honor.

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1 M I C H A E L B R A C O N I, having been previously  
2 sworn was examined and testified as follows:

3 DIRECT EXAMINATION (CONT'D.)

4 BY MS. KASULIS:

5 Q Good morning, Special Agent Braconi.

6 A Good morning.

7 Q Now, I want to direct your attention back to Government  
8 Exhibit 704, and it's already in evidence.

9 Can you please just remind the jury what Government  
10 Exhibit 704 is?

11 A This is a chart that shows MSMB Capital investor  
12 statements totalled versus the bank and brokerage statements  
13 for certain months.

14 Q And as you testified yesterday, MSMB Capital did not  
15 invest in Retrophin; is that correct?

16 A That's correct.

17 Q So, now let's go to the next chart that's already in  
18 evidence, Government Exhibit 705.

19 THE COURT: Before you do that, may I ask a  
20 question --

21 MS. KASULIS: Sure.

22 THE COURT: -- of the agent.

23 How did you make the determination that MSMB Capital  
24 did not invest in Retrophin?

25 THE WITNESS: Sure. So, I reviewed the bank and

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1 brokerage statements for MSMB Capital for the entire period  
2 and there were no transfers or payments to Retrophin.

3 THE COURT: Thank you.

4 Q And now, if we could go to Government Exhibit 705, and  
5 can you again just remind the jury what this chart shows?

6 A This is a chart of MSMB Healthcare and it's their total  
7 investor statements that were sent out to the investors versus  
8 their bank and brokerage statements for certain months.

9 Q So, did you use the same methodology in this chart, 705,  
10 that you did to prepare 704?

11 A Yes.

12 Q Now, MSMB Healthcare, did it in fact invest in Retrophin?

13 A Yes.

14 Q And I think you testified yesterday that between February  
15 2011 and December 2012 the net amount of money transferred  
16 from MSMB Healthcare accounts to Retrophin was approximately  
17 \$2,120,800; is that right?

18 A That's correct.

19 Q So, going back to Government Exhibit 705, for the columns  
20 in red, do these columns include the net amount of money  
21 invested from MSMB Healthcare into Retrophin?

22 A No.

23 Q But the blue investor columns, what do those columns  
24 reflect?

25 A Those reflect the entire investor statement, so I added

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1 whatever the total was for the investor statement which  
2 included Retrophin and I totalled it up for that month.

3 Q So, the blue columns do include the value of the  
4 investment in Retrophin according to the MSMB Healthcare  
5 investor statements; is that right?

6 A Correct.

7 Q So, with respect to this last month here on the chart,  
8 July 2012; now, based on your review of Ms. Spaulding's bank  
9 and brokerage summary charts, what is the net amount of money  
10 invested from MSMB Healthcare into Retrophin from February  
11 2011 to July 2012, the month that we're looking at here, the  
12 last month on the chart?

13 A That was \$1,890,000.

14 Q And so, according to this chart, in July of 2012 the  
15 total amount, this blue column, in MSMB Healthcare based on  
16 the investor statements alone was \$4.37 million approximately;  
17 is that correct?

18 A Correct.

19 Q And the red column, the amount in the bank and brokerage  
20 records in this month for MSMB Healthcare was approximately  
21 \$112,000; is that correct?

22 A Correct.

23 Q So, if you add the \$112,000 to the approximately \$1.8  
24 million that MSMB Healthcare had invested into Retrophin up  
25 until this point of time, how much would that be?



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1 A It's approximately two -- a little more than two million  
2 dollars.

3 Q So, that would be less than half of this blue column, is  
4 that right, for July 2012?

5 A That's correct.

6 Q Now, again, you had testified that the total amount of  
7 money from February 2011 to December of 2012, so past this  
8 time period, past July 2012 was approximately \$2.12 million;  
9 is that correct?

10 A That's right.

11 Q So, if you add that amount to the \$112,000, approximately  
12 \$112,000 here on the July 2012 bank and brokerage records  
13 amount, how much would that be in total?

14 A In total I think it's a little over \$2,200,000, so it's  
15 again about half or maybe a little more than half.

16 Q So, half of what's indicated here for the entire investor  
17 statements for MSMB Healthcare for the month of July 2012?

18 A That's correct.

19 THE COURT: When you say "here," you're referring to  
20 the amount?

21 MS. KASULIS: Exactly, for the July 2012 chart, this  
22 period on the chart.

23 Q So, let's turn back to the big binder that we were  
24 reviewing yesterday, the e-mails binder.

25 A Okay.

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1 Q And behind Tab A, the first tab in your binder, I'm  
2 showing you what's already in evidence as Government Exhibit  
3 126-1, and what is this document, Special Agent Braconi?

4 A It's a Certificate of Formation from the State of  
5 Delaware.

6 Q And for what entity?

7 A For MSMB Healthcare Investors LLC.

8 Q And if we look at the bottom of this exhibit, what is the  
9 date of this Certificate of Formation?

10 A February 7th, 2011.

11 Q And who is it signed by?

12 A Martin Shkreli.

13 Q Now, if we look at the second tab of your binder, I'm  
14 directing your attention to what is already in evidence as  
15 Government Exhibit 126-5, and what is this document, sir?

16 A This is an e-mail from Martin Shkreli to NAV Investor  
17 Services on February 1st, 2012.

18 Q Does there appear to be an attachment to this e-mail?

19 A Yes.

20 Q And what is the title of the attachment?

21 A MSMB Healthcare LP Additional Investment in  
22 Retrophin LLC.

23 Q And that's the title of the e-mail, the attachment?

24 A Oh, I'm sorry, yes, MSMB Healthcare LP Retrophin  
25 Investment 2/1/12.

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1 Q And if we go to the next page of this exhibit, and what  
2 is this attachment?

3 A This is a subscription agreement.

4 Q And if we go to the last page, does this appear to be the  
5 subscription agreement we've seen between MSMB Healthcare  
6 investing into Retrophin the approximately \$900,000 on  
7 February 1st, 2012?

8 A Yes.

9 Q And, so this subscription agreement was sent to NAV; is  
10 that correct?

11 A That's correct.

12 Q And the date on the e-mail was February 1st, 2012, the  
13 same date as the subscription agreement?

14 A That's correct.

15 Q Okay. Now, if I can direct your attention to Tab 2 of  
16 your binder.

17 MS. KASULIS: Your Honor, for the record, all of the  
18 documents that we are going through today have already been  
19 admitted into evidence but for a couple of documents at the  
20 very end of the direct examination.

21 THE COURT: Thank you.

22 MS. KASULIS: And we have made all of the redactions  
23 that we discussed yesterday.

24 THE COURT: All right, great. Thank you.

25 Q So, I'm showing you Government Exhibit 214. If we could

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1 look at the top of this e-mail, and what is this e-mail?

2 A It is an e-mail from David Kravitz to Martin Shkreli and  
3 cc-ing Evan Greebel on September 5th, 2012.

4 Q Does it appear to have a Retrophin capitalization table  
5 attached revised September 5th, 2012?

6 A Yes.

7 Q And can we please turn to the next page.

8 Does this appear to in fact be that capitalization  
9 table from that date?

10 A Yes.

11 Q Special Agent Braconi, have you had an opportunity to  
12 review this capitalization table?

13 A Yes.

14 Q Do you see any investment from MSMB Capital listed on  
15 this capitalization table?

16 A No.

17 Q And if we look at the next page of this table, do you see  
18 on February 1st, 2012 an MSMB Healthcare investment of  
19 approximately \$900,000?

20 A Yes.

21 Q And that's as of September 5th, 2012?

22 A The capitalization table on September 5th, 2012 -- I'm  
23 sorry, yes, yes.

24 Q Okay. Let's go to the next tab, Tab A, Government  
25 Exhibit 117-6, and if we could look at the top paragraph or

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1 the top half of this document; could you please read the first  
2 two paragraphs of this document.

3 A "This Settlement Agreement is dated September 5th, 2012  
4 and is entered into by Merrill Lynch, Pierce, Fenner & Smith  
5 Incorporated and MSMB Capital Management LP, Martin Shkreli  
6 and Marek Biestek as follows: Whereas, Merrill Lynch claims  
7 that MSMB incurred a debt of \$7,037,950 in connection with  
8 orders from the purchase, sale and short sale of securities  
9 through Merrill Lynch in February 2011."

10 Q If we go to the bottom of this document, if you could  
11 please read all of section one entitled Financial  
12 Representations and Warranties.

13 A Sure. "Financial Representations and Warranties. Each  
14 of the MSMB parties that is set forth in Exhibit A hereto, an  
15 aggregate list setting forth the approximate value of each of  
16 his/its material assets and liabilities as they currently  
17 exist and each represents and warrants that he/it does not  
18 have and since January 1st, 2011 has not had assets in his/  
19 its custody or control sufficient to pay the debt in full and  
20 that he/it has a reasonable basis to believe that the MSMB  
21 parties have the ability to obtain sufficient funds in the  
22 form of loans or investments from bona fide and legitimate  
23 sources to meet the financial obligations to Merrill Lynch  
24 that are undertaken by the MSMB parties in this agreement  
25 specifically with regards to those set forth in paragraph two

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1 below."

2 Q And if we can look at paragraph two in its entirety, this  
3 section is entitled Repayment Obligation and under subsections  
4 one, two and three there appears to be here three different  
5 options for payment, is that correct?

6 A That's correct.

7 Q And the first option being to pay Merrill Lynch  
8 \$1,350,000 on or about December 15th, 2012 which would be the  
9 total payment equaling \$1.35 million; is that correct?

10 A Yes.

11 Q And then the next two options allow for a staggering of  
12 payment, is that correct, over a period of time?

13 A Yes.

14 Q But the total amount being \$1.35 million?

15 A I think the total --

16 Q Oh, I'm sorry, that's right, for sections two and three  
17 because of the staggering over time the amount would then  
18 increase --

19 A Yes.

20 Q -- that's owed under each of those options; is that  
21 right?

22 A That's correct.

23 Q And if we go to the page ending in Bates number 702, and  
24 who signs this agreement for MSMB Management LP?

25 A Martin Shkreli.

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1 Q And if we go to the next page of this document, who signs  
2 on behalf of Martin Shkreli at the top of the page?

3 A Martin Shkreli.

4 Q And what is the date for the notary for the signature?

5 A September 5th, 2012.

6 Q And below that does it appear that Marek Biestek also  
7 signs for himself?

8 A Yes.

9 Q And with the same date for the notary?

10 A Yes.

11 Q And if we turn to the page ending in 705, does this  
12 appear to be an attachment to the settlement agreement?

13 A Yes.

14 Q And if we go to the next page, what is the title of this  
15 document?

16 A Exhibit A Asset/Liabilities for MSMB Parties as of  
17 September 4th, 2012.

18 Q And so, it appears to have three sections for Martin  
19 Shkreli, Marek Biestek and MSMB Capital Management LP.

20 For Martin Shkreli, what is the judgment outstanding  
21 listed there?

22 A \$2,362,350.

23 Q And for MSMB Capital Management LP, what is listed there  
24 for cash and equivalents?

25 A Zero.

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1 Q And for the total amount?

2 A Zero.

3 Q And that's zero dollars?

4 A That's correct.

5 Q Let's now turn to Tab B, the next document.

6 MR. AGNIFILO: I'm sorry, can we have just a very  
7 brief side-bar?

8 THE COURT: Sure.

9 (Continued on next page.)

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*Side-Bar*

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1 (The following takes place at side-bar.)

2 MR. AGNIFILO: Hi, Judge. I'm just going to request  
3 a very brief charge that Mr. Shkreli is not charged with  
4 defrauding Merrill Lynch because I think that is certainly one  
5 of the conclusions that can be reached from the exhibit that  
6 they're just putting in evidence. That's not part -- he's not  
7 actually charged with that so I'd just like that clarified.

8 MS. SMITH: I think from the government's  
9 perspective there's not necessarily an allegation he's  
10 defrauding Merrill Lynch because there are no assets in MSMB  
11 Capital so I'm not sure that this is actually defrauding  
12 Merrill Lynch. I think the issue is when he says later that  
13 it has assets in MSMB Capital to other parties.

14 MR. AGNIFILO: I think the conclusion that one could  
15 come to especially by the timing of when he created Healthcare  
16 which is four days after the Orex trade is that he created  
17 Healthcare to defraud Merrill Lynch, I mean that's -- I mean  
18 it seems inescapable to me.

19 MS. SMITH: That's fine. I know he says that in his  
20 SEC testimony which isn't coming in but that's fine.

21 THE COURT: All right, so an instruction that he's  
22 not charged with defrauding Merrill Lynch.

23 MR. AGNIFILO: That's fine. Thank you, Judge.

24 THE COURT: All right.

25 (End of side-bar.) (Continued on next page.)

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1 THE COURT: Members of the jury, please be advised  
2 that Mr. Shkreli is not charged in this case with defrauding  
3 Merrill Lynch.

4 MS. KASULIS: May I proceed?

5 THE COURT: Yes.

6 BY MS. KASULIS:

7 Q Okay. So, behind Tab B of your binder, it's Government  
8 Exhibit 117-7, and what is this document entitled?

9 A Amendment No. 1 to Settlement Agreement.

10 Q Can you please read the first paragraph of this document?

11 A "This Amendment No. 1 to Settlement Agreement is dated as  
12 of December 13th, 2012 and is entered into by Merrill Lynch,  
13 Pierce, Fenner & Smith Incorporated, MSMB Capital Management  
14 LP, Martin Shkreli and Marek Biestek as follows."

15 Q And they're all collectively defined as MSMB parties, is  
16 that right?

17 A That's correct.

18 Q If we look at the fourth whereas clause.

19 A "Whereas, in exchange"?

20 Q Yes?

21 A Okay. "Whereas, in exchange for consideration in  
22 addition to the repayment obligation Merrill Lynch is willing  
23 to extend the due date of the repayment obligation from  
24 December 15th, 2012 as provided in paragraph two of the  
25 Settlement Agreement to December 31st, 2012."

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1 Q And if we look at the very bottom of this document, first  
2 section one, paragraph one, can you please read up through the  
3 next page for this paragraph.

4 A "Additional payment in order to induce Merrill Lynch to  
5 extend the due date of the repayment obligation to December  
6 31st, 2012. The MSMB parties will pay to Merrill Lynch the  
7 separate and additional sum of \$67,500."

8 Q And can you read the next sentence please.

9 A "The additional payment shall be made so as to be  
10 received by Merrill Lynch no later than 6 p.m. Eastern  
11 Standard time on December 17th, 2012."

12 Q And, again, is this document signed by both Martin  
13 Shkreli and Marek Biestek?

14 A Yes.

15 Q Okay. Let's turn to the next tab, Tab C of your binder,  
16 it's Bates number 117-8.

17 And what is this document entitled?

18 A Amendment No. 2 to Settlement Agreement.

19 Q Can you please read the first paragraph of this document.

20 A "This Amendment No. 2 to Settlement Agreement is dated as  
21 of January 8th 2013 and is entered into by Merrill Lynch,  
22 Pierce, Fenner & Smith Incorporated, MSMB Capital LP, Martin  
23 Shkreli and Marek Biestek as follows."

24 Q If we could zoom out and, again, all of those are  
25 collectively defined as MSMB parties?

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1 A Yes.

2 Q If we could read the fourth and fifth whereas clause on  
3 these pages, on this page actually, right above that.

4 A "Whereas, the MSMB parties failed to meet the repayment  
5 obligation on or before December 31st, 2012 as required by  
6 Amendment No. 1 and accordingly received by e-mail on notice  
7 default dated January 1st, 2013 from Merrill Lynch; whereas,  
8 the MSMB parties anticipate being able to meet the repayment  
9 obligation if the due date for the payment is further extended  
10 from December 31st, 2012 to March 1st, 2013."

11 Q If we go to the next page of this document, if we could  
12 highlight paragraph one please.

13 Can you read paragraph one up until January 15th,  
14 2013 please.

15 A Sure. "Additional payment in order to induce Merrill  
16 Lynch to further extend the due date of the repayment  
17 obligation to March 1st, 2013. The MSMB parties will pay to  
18 Merrill Lynch the separate and additional sum of \$125,000.  
19 The second additional payment shall be made so as to be  
20 received by Merrill Lynch no later than 6 p.m. Eastern  
21 Standard time on January 15th, 2013."

22 Q And if we could now just flip to Tab 25 of your binder  
23 and that's Government Exhibit 252, and this appears to be an  
24 e-mail from Martin Shkreli dated January 4th, 2013 to Evan  
25 Greebel with the title "The Other Thing." Can you please read

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1 this e-mail.

2 A "I got them down to 125,000 by 1/15 and the big check by  
3 3/1."

4 Q Thank you. And then if we can go to Tab 3 of your  
5 binder -- excuse me, if we can go to Tab 4 and that's  
6 Government Exhibit Number 347. This appears to be an e-mail  
7 from Eric Schmidt and if you look at the bottom, he appears to  
8 be from the Securities and Exchange Commission; is that right?

9 A Yes.

10 Q And that is to Martin at msmbcapital.com dated October  
11 1st, 2012 with the title MSMB Capital Management LLC Valuation  
12 NY-8799, do you see that?

13 A Yes.

14 Q With an attachment?

15 A Yes.

16 Q Can you please read this e-mail from Mr. Schmidt.

17 A "Dear Mr. Shkreli, As we discussed, I am attaching a copy  
18 of the request for voluntary production of documents that I  
19 sent to you today via overnight delivery. Please feel free to  
20 call me or have your counsel call me if you have any  
21 questions. Eric Schmidt."

22 Q If we could turn to the page ending in -- the next page,  
23 713, and this is the attachment to the e-mail that we just  
24 saw; is that right?

25 A Yes.

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1 Q And it's dated October 1st, 2012 from the Securities and  
2 Exchange Commission?

3 A Yes.

4 Q And it's addressed to MSMB Capital Management LLC Care of  
5 Mr. Martin Shkreli?

6 A Correct.

7 Q With the title MSMB Capital Management LLC Valuation  
8 NY-8799. Could you please read this first paragraph of the  
9 letter.

10 A "Dear Mr. Shkreli, Staff of the United States Securities  
11 and Exchange Commission is conducting an informal  
12 investigation in the above referenced matter to determine  
13 whether there have been violations of the federal securities  
14 laws. In connection with this investigation, the staff  
15 requests that MSMB, as defined in the attached document  
16 request, voluntarily produce documents and information  
17 described in the attachment by October 16th, 2012."

18 Q If we could go to the page ending in 717, and this  
19 section is entitled Documents To Be Produced; is that correct?

20 A Correct.

21 Q Can you please read these two sections.

22 A "One: Annual and quarterly financial statements for all  
23 investment funds managed by MSMB including, without  
24 limitation, MSMB Healthcare LP. Please produce audited  
25 financial statements where available. Two: All documents

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1 concerning the assets under management for any fund managed by  
2 MSMB including, without limitation, MSMB Healthcare LP."

3 Q If we can go to the next tab of your binder, Tab 5,  
4 Government Exhibit 218, if we could zoom in on the e-mail.

5 So, this appears to be an e-mail from Martin Shkreli  
6 to ENF-Centralized Production Unit with a carbon copy to  
7 himself and Eric Schmidt. Was that the SEC attorney that we  
8 saw in the prior document?

9 A Yes.

10 Q With the title NY-8799 Production with a series of  
11 attachments; is that correct?

12 A Correct.

13 Q And what does Mr. Shkreli write there?

14 A "All, Please find attached documents responsive to  
15 NY-8799. The password for the protected files is cqpa7391."

16 Q If we turn to the next page, one of the attachments to  
17 this document, if we could zoom in on the letter please, can  
18 you please read this letter.

19 A "Mr. Schmidt, Please find the attached documents  
20 responsive to NY-8799. This production is complete to the  
21 best of my knowledge. We are willing to supplement the  
22 production at your request. In reviewing the documents I ask  
23 you to keep in mind the following statements which may enhance  
24 your investigation or deposition or limit the need for them.

25 Point 1. We have decided to end the MSMB limited

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1 partnership with closure targeted for the end of this November  
2 or next month, December. All limited partners have been  
3 notified of the plans for the redemption of their assets. My  
4 colleagues and I will focus on the growth of our MSMB  
5 incubated biotechnology business, Retrophin, for which a going  
6 public transaction is being planned as of this production.  
7 Calculating the MSMB group assets under management (AUM) is an  
8 interpretive task as with any fund company. MSMB has managed  
9 no less than five limited partnerships and two managed  
10 accounts since inception of which five of the seven have been  
11 discontinued. Our most successful and largest effort has been  
12 the private equity endeavor which led to creation of Retrophin  
13 LLC which has restructured as Retrophin, Inc., Retrophin's  
14 valuation has fluctuated between 20 million and 80 million and  
15 has always been an MSMB majority owned company. Because this  
16 business represents most of the recent activities of MSMB, one  
17 may choose to include it in the calculation of AUM as a  
18 private equity company or fund may do. MSMB has had a  
19 long-term advisory relationship with Josiah T. Austin, a  
20 private investor. For many years this advisory relationship  
21 represented the bulk of MSMB's activities. Inclusion of these  
22 efforts would also affect the AUM calculation. I hope this  
23 information helps you with your investigation. Please do not  
24 hesitate to contact me if you need anything. Thank you.  
25 Martin Shkreli."



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1 Q If we go to the next page of this exhibit, what is this  
2 document entitled?

3 A Schedule Funds Managed by MSMB.

4 Q And this is one of attachments that was included in  
5 Mr. Shkreli's e-mail to the SEC?

6 A Yes.

7 Q And if we look under MSMB Capital Management LP, what is  
8 the amount listed there?

9 A \$2,600,000.

10 Q And what is AUM?

11 A Assets under management.

12 Q And then if we look at the bottom for Retrophin LLC  
13 biotechnology company, do you see there that it lists a  
14 third-party valuation is provided?

15 A Yes.

16 Q If we look at the next page of this document, and is this  
17 the attachment from this e-mail?

18 A Yes.

19 Q And is this one of the investment summaries from VRC that  
20 we've seen in evidence already?

21 A Yes.

22 Q Okay. And just to be clear, the date on this investment  
23 summary, what is that date?

24 A June 30th, 2012.

25 Q And it's for MSMB Healthcare LP?

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1 A Correct.

2 Q Okay. So, now let's go to Tab 6, Government Exhibit 221.  
3 This appears to be an e-mail chain between Mr. Shkreli and  
4 Mr. Greebel ending on November 26th, 2012 with the title  
5 Surrender Agreement. If we can start from the bottom, if you  
6 could please read the first e-mail from Martin Shkreli on  
7 November 25th, 2012.

8 A "Can you prepare a surrender agreement for the Retrophin  
9 shares I have given out."

10 Q In response Mr. Greebel writes: "What is a surrender  
11 agreement? What do you want to do?"

12 Scroll up.

13 What does Mr. Shkreli write to Mr. Greebel?

14 A "Cancel a specific transaction I made."

15 Q Transfer? Is that transfer or transaction?

16 A I don't know what I said but, "Cancel a specific transfer  
17 I made."

18 Q And if we could then scroll up.

19 Mr. Greebel then responds to Mr. Shkreli stating:

20 "Hard to unwind stuff, easier if they transfer back."

21 And if we scroll up to Mr. Shkreli's response, what  
22 does he state?

23 A "Okay, that works."

24 Q Let's go to Tab 7 of your binder, that's Government  
25 Exhibit 223. This appears to be an e-mail from Martin Shkreli

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1 to Kevin Mulleady dated November 30th, 2012 with the title  
2 Form Donee Rep Letter KM Reversal with an attachment of the  
3 same name.

4 Can you please read this e-mail for the jury.

5 A "This will reverse the 10,000 shares I gave you. The  
6 30,000 shares I gave you were transferred invalidly. The  
7 auditors and lawyers just determined this. Michael Fearnow  
8 will sell you stock for a nominal amount, less than \$1,000,  
9 that equal to 5 percent of the common stock but not preferred  
10 stock of Retrophin, Inc., the public company post-merger.  
11 This sale to you will take place shortly, possibly within the  
12 next few days. I need your signature ASAP. Thanks. MS."

13 Q And if we turn to the next page, the attachment to this  
14 document and look at the top paragraph, does this appear to be  
15 a Retrophin LLC transfer and donee representation letter?

16 A Yes.

17 Q Can you please read the first sentence of this letter.

18 A "For value received Kevin Mulleady does hereby grant,  
19 sell, assign, transfer and convey unto Martin Shkreli, its  
20 successors and assigns, all of his right, title and interest  
21 to 10,000 Class A common units of Retrophin LLC, a Delaware  
22 Limited Liability Company, to have and to hold forever and the  
23 transferor does hereby warrant and agree to defend title to  
24 the same against the claims of any person or entity."

25 Q And the date on this e-mail was November 30th, 2012; is

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1 that right?

2 A That's correct.

3 Q And if we go to the last page of this document, it  
4 appears to be unsigned. At the top it appears to be listed  
5 there Kevin Mulleady as the transferor with Martin Shkreli as  
6 the transferee, and what are the dates that are typed there?

7 A May 25th, 2012.

8 Q If we go to Tab 8 of this binder, and that's Government  
9 Exhibit 224. This is an e-mail chain between Martin Shkreli  
10 and Tom Fernandez dated November 30th, 2012. I will read the  
11 portion from Tom Fernandez to Martin Shkreli.

12 "Can you memorialize our understanding as  
13 discussed."

14 And then in response Mr. Shkreli writes, Agent  
15 Braconi?

16 A Sure. "You will surrender all of your stock to me and  
17 have zero. You will buy from Troy Fearnow for a nominal  
18 amount, less than 1,000 U.S. dollars, approximately 5 percent  
19 of the post-merger outstanding common shares of Retrophin. In  
20 the event you are unable to buy stock from Fearnow because a  
21 cancellation of the merger or any other unforeseen  
22 circumstance, I'll return to you the shares you are planning  
23 to surrender today."

24 Q If we can go to the next tab, Tab 9, that's Government  
25 Exhibit 225, this is an e-mail from Martin Shkreli dated

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1 December 3rd, 2012 to Marek Biestek at 7:17 p.m. with the  
2 title Final Capitalization Table and then attachment, an Excel  
3 spreadsheet of the same name; is that correct?

4 A That's correct.

5 Q If we go to the attachment to this e-mail, there's a  
6 one-page attachment; under the common stock pre-money and  
7 post-money column do you see MSMB Capital Management LP listed  
8 there?

9 A Yes.

10 Q Let's go to Tab 10, Government Exhibit 226, this is an  
11 e-mail from Martin Shkreli to Evan Greebel and Jackson Su  
12 dated December 3rd, 2012 at 11:11 p.m., so the same date as  
13 the prior e-mail approximately four hours later, is that  
14 right?

15 A Yes.

16 Q And it has the title Final Capitalization Table.xls with  
17 attachment of the same name. If we can go to the next page of  
18 this exhibit, on the left-hand side of this page under the  
19 Common Stock Post-Money Post-Merger, do you see MSMB Capital  
20 Management listed there?

21 A Yes.

22 Q For 600,000 and then 5.8 percent?

23 A Yes.

24 Q And if we look at the bottom of this page on the left  
25 side, under Common Stock Pre-Money and then Pre -- looks like

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1 the column title got cut off, do you see MSMB Capital  
2 Management listed here?

3 A Yes.

4 Q And how many shares vested?

5 A 75,000.

6 Q And that's vested plus unvested, a total of 8.1 percent?

7 A Correct.

8 Q Let's go to Tab 11, Government Exhibit 371, this e-mail  
9 is from Michael Rosensaft and if you see at the bottom of the  
10 e-mail, he's listed as Partner, Katten Muchin Rosenman LLP  
11 with a New York, New York address.

12 Mr. Rosensaft writes to Martin Shkreli and Evan  
13 Greebel on November 25th, 2013, with the title Subpoena. Can  
14 you please read this e-mail to the jury.

15 A "I spoke to Eric Schmidt, I spoke to him about using a  
16 subpoena versus an informal request, but he was adamant that  
17 he wants to send a subpoena. He indicated that, as suspected,  
18 it is discrete and is going to ask for documents relating to  
19 interests in Retrophin provided to MSMB or its limited  
20 partners. Mike."

21 Q Let's go to Tab 12, Government Exhibit 204. This is an  
22 e-mail chain with the last date being March 7th, 2011 between  
23 Martin Shkreli and Edmund Sullivan; is that correct?

24 A Yes.

25 Q If we can look at the bottom half of this e-mail chain,

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1 on March 7th, 2011 at 9:26 a.m. Martin Shkreli writes an  
2 e-mail. Can you please read this e-mail to the jury.

3 A "Could you do me a big favor and call this guy who is  
4 going to give us four million dollars, it sounds like he is  
5 changing his mind. Steve Harrison, sharrison@belmontnet.com,  
6 his phone number is (214)559-9721. I would mention you  
7 invested, don't say the sum and then say you got back 1.3  
8 times that amount in a matter of months and there was little  
9 hassle in redeeming. Talk about how long you've known me and  
10 the trust. Please sing my praises. This is a lot for us and  
11 if you can help us close the deal I'd really appreciate it.  
12 If you could do it ASAP that would be great too. Thanks  
13 brother. Martin Shkreli."

14 Q That's MSMB Capital Management LP?

15 A Yes.

16 Q And then in response Edmund Sullivan on March 7th, 2011  
17 writes to Mr. Shkreli: "Send me any background info you have  
18 on the guy, how you found, who he knows, who he trusts, what  
19 has he invested into in the past, what are his expectations.  
20 Is this for MSMB Cap or RETR? Sounds like an LP but just  
21 making sure. Has he mentioned SMA?"

22 Then if we could scroll up to the last two e-mails  
23 in this chain.

24 It appears that Mr. Sullivan writes to Mr. Shkreli  
25 again stating: "Does he know Orex drama, is it resolved

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1 officially with the VAML? Do you have last year's audit  
2 available? Who is your legal? Lot of questions but just want  
3 to be prepped."

4 In response Martin Shkreli writes to Mr. Sullivan on  
5 March 7th, 2011. Can you please read that response from  
6 Mr. Shkreli.

7 A "This is for MSMB Cap. Not aware of any drama nor does  
8 it concern him as it is a managed account. Our legal is  
9 McCormick & O'Brien. I would stay away from legal and audit  
10 and accounting and talk about your experience with MSMB LP and  
11 how you were treated with trust, transparency and quick turn  
12 around to funding. Any questions on the other stuff I would  
13 say I trust him and the mechanics in place. For the other  
14 stuff we're fine as I traded with the guy and watched him  
15 trade and was happy with what was provided."

16 (Continued on next page.)

17

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1 DIRECT EXAMINATION (CONTINUED)

2 BY MS. KASULIS:

3 Q If we could go to the next tab, Tab 13  
4 Government Exhibit 353.

5 This appears to be an e-mail from Kevin Mulleady  
6 to himself dated June 30th, 2011, with the title For Martin.  
7 And if we could actually just zoom in on that e-mail.

8 Can you please read the excerpts there that are  
9 listed?

10 A "The other lawsuit affect my investors, family and  
11 friends. I want transparency equity and funds lies. If not  
12 worth anything, I will take 100 percent, hundred positions  
13 is a lie. Third person, how dare you take that risk. This  
14 is my family and friends and I could have so much money.  
15 How many funds you've blown up? Seriously, you think I'm  
16 stupid?"

17 Q If you would scroll down. Go ahead.

18 A "You have a -- a hundred positions. Your positions are  
19 never big."

20 Q And that's Kevin Mulleady, CEO MSMB Capital Management,  
21 LLC?

22 A Correct.

23 Q And if you was just scroll to the top, that e-mail was  
24 written to Mr. Mulleady to himself at approximately 2:00  
25 a.m.; is that right?

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1 A Correct.

2 Q And then he forwards it to himself at 6:32 a.m.; is  
3 that correct?

4 A Correct.

5 Q Now if we go to Tab 14, Government Exhibit 349.

6 If we look at the bottom e-mail of this page,  
7 Special Agent, in your review of the e-mail is this the  
8 e-mail chat that we saw previously between Mr. Mulleady and  
9 Caroline Stewart?

10 A Yes.

11 Q And if we look at Kevin Mulleady's e-mail, it's from  
12 Mr. Mulleady to Meritech dated May 27, 2011 at 11:45 a.m.,  
13 with the title From Our Combo. Mr. Mulleady writes, "I am  
14 going to grab some coffee with her this afternoon. But we  
15 should talk about this. Don't leave an issue blowing up.  
16 Obviously please don't forward to Martin at this point."

17 And if we can go to the top three e-mails on this  
18 page.

19 Mr. Mulleady then forwards this e-mail to -- on  
20 July 22nd, 2011, at 1:16 p.m. to Merit by fax and then  
21 forwards that chain on July 26th, 2011 at 1:42 p.m. to  
22 Martin Shkreli. Martin Shkreli then responds at 5:45 p.m.  
23 on that day July 26th, 2011 to Mr. Mulleady. Can you please  
24 read his response?

25 A "Yeah, humorous. How confused she is. Seems very

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1 emotional. Oh, well."

2 Q If we can go to Tab 15, Government Exhibit 355. This  
3 is an e-mail from Kevin Mulleady dated August 8th, 2011 at  
4 3:51 p.m. to himself. In your review of this document, this  
5 appears to be a distribution list of some kind?

6 A Yes.

7 THE COURT: I am sorry, what exhibit is that?

8 MS. KASULIS: I'm sorry, it's 355.

9 THE COURT: Thank you.

10 BY MS. KASULIS:

11 Q With the title MSMB Capital Recap of Past Week. And so  
12 the first sentence he states, "Please pardon the impersonal  
13 message"; is that right?

14 A Correct.

15 Q Can you read the first line of the next paragraph?

16 A "Last week was very eventful for MSMB Capital."

17 Q And then the next paragraph, what does that first  
18 sentence read?

19 A "MSMB Flagship Fund is up other 30 percent year to date  
20 and caused overturns month to date."

21 Q And if we go to the next exhibit,  
22 Government Exhibit 356 behind Tab 16.

23 This is an e-mail from Kevin Mulleady dated  
24 August 29th, 2011, to Mr. Shkreli with the title MSMB Pitch  
25 Book Performance Review/Question with an attachment, a

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1 couple of attachments.

2 Can you please read the first sentence -- can you  
3 please just read this e-mail.

4 A "This PowerPoint is ready go to out to perspective  
5 clients with your approval. I noticed a discrepancy in the  
6 performance on Excel file. Please review attached Excel,  
7 corrections in red. I will update unshared file after  
8 response. Thanks."

9 Q If we go to the next page of this exhibit, it's an  
10 attachment from MSMB PowerPoint entitled MSMB Capital  
11 Management, and the date in the bottom right-hand corner,  
12 what is that date?

13 A August 2011.

14 Q If we go to the page ending in Bates Number 139. Under  
15 biographies, who is listed there?

16 A Martin Shkreli as portfolio manager, Marek Biestek as  
17 portfolio manager and Kevin Mulleady as CEO.

18 Q And if we go to the page ending in Bates number 141,  
19 the title of this slide is Portfolio Construction. The  
20 black arrow, can you please read that last arrow in the  
21 bullet.

22 A Sure. "Position sizing, attribution loss of 1 percent  
23 limit targeted, 10 percent position limit."

24 Q And then the last arrow?

25 A I'm sorry. "Certified portfolio 100 position on

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1 average. Geographic diversity and the longs/shorts within  
2 geographies."

3 Q And if we go to the page ending in 154, this PowerPoint  
4 is entitled Track Record; is that correct?

5 A Yes.

6 Q And that's from inception what it appears to be  
7 November 2009 through July 30th, 2011, and in the year to  
8 date column, what is listed there for the returns for 2010?

9 A 25.2 percent.

10 Q And the year to date returns in 2011?

11 A 11.5 percent.

12 Q If we go to the next page of this document, the last  
13 page of the PowerPoint is entitled Summary of Fund Terms.  
14 Who is listed there as the auditor?

15 A Rothstein, Kass & Company.

16 Q Legal counsel?

17 A Kleinberg, Kaplan, Wolff & Cohen, PC.

18 Q And the administrator?

19 A Is NAV Consulting.

20 Q Can you please read the very bottom of this slide?

21 A "No gates, side pockets, liquid securities or other  
22 trips."

23 Q And if we go to Government Exhibit 357 behind Tab 17 of  
24 your binder, this is an e-mail from Kevin Mulleady dated  
25 September 13th, 2011, at 4:29 p.m. to an individual named

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1 George, and the title is New Fund and Original One and he  
2 attaches some PowerPoints. What does Mr. Mulleady write in  
3 this e-mail?

4 A "Hey, George, Hope all is well. Not positive if you  
5 invest in hedge funds or not. But would you know of anyone  
6 that would be interested in looking at the attached? One  
7 has been running two years. The other two are launching  
8 October 1st, 2011, but both experienced, impressive  
9 portfolio managers. No pressure and don't mean to be  
10 intrusive. We will be friends regardless. See you  
11 Saturday. Thank you, Kevin."

12 Q And does this appear to be the next page of the  
13 PowerPoint?

14 A Yes.

15 Q And it's For MSMB Capital Management; is that correct?

16 A Correct.

17 Q And it's dated August 2011, if you turn you head?

18 A Correct.

19 Q So there it's dated August 2011?

20 A Correct.

21 Q And if you go to the page ending in 797.

22 And does this PowerPoint appear to be very similar  
23 to the one that we saw in the prior exhibit that we  
24 reviewed?

25 A Yes.

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1 Q And under diversified portfolio, what is listed there?

2 A "A hundred positions on average, geographic diversity  
3 and long/shorts within geographies."

4 Q If we go to Government Exhibit 350, and that's Tab 18  
5 of your binder. This is an e-mail chain between Martin  
6 Shkreli and Kevin Mulleady dated November 2nd, 2011, with an  
7 initial e-mail from David Geller. I would will start at the  
8 button on November 2nd at 3:48 p.m., David Geller, and just  
9 to remind the jury who is David Geller?

10 A He was an investor in, I believe, it's MSMB Healthcare.

11 Q He wrote, "Kevin, I looked over the PPM memo. Please  
12 contact me as I have a couple of questions that need to be  
13 addressed. Thanks, David Geller."

14 And if we move up, Mr. Mulleady writes to Martin  
15 Shkreli, on November 2nd, 2011, "You got time for a quick  
16 call on this? Have to speak to both Gellers this  
17 afternoon."

18 If you scroll up to just the next two e-mails.  
19 What does Martin Shkreli write to Mr. Mulleady in response?

20 A "Got to see Mitt Romney tonight."

21 Q And then Mr. Mulleady writes to Mr. Shkreli in  
22 response, "Ask him if he voted for Kennedy. The majority of  
23 changes on PPM with done to serve what purpose..."

24 And what does Mr. Shkreli write in response to  
25 Mr. Mulleady on November 2nd, 2011?

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1 A "Make a small investment in Retrophin."

2 Q If we go to the next exhibit, Government Exhibit 358  
3 behind Tab 19. Agent Braconi, if we could, in your review  
4 of this e-mail chain starting from the bottom up, does this  
5 appear to be an e-mail exchange regarding a potential  
6 investor, back and forth about a potential investor?

7 A Yes.

8 Q And if we go to the middle e-mail or the top half of  
9 the e-mail chain, please.

10 Mr. Mulleady writes to Martin Shkreli on  
11 January 19th, 2012. Can you please read that first sentence  
12 that he writes to Mr. Shkreli?

13 A "I am going to touch up the pitch book, i.e., take out  
14 side pocket comments, LOL. I'll have it for your review  
15 this afternoon."

16 Q If we go to Tab 20, Government Exhibit 359. This  
17 appears to be another e-mail chain in April of 2012. In  
18 your review of this e-mail chain, from the bottom up, again,  
19 does this appear to be a chain regarding another potential  
20 investor, Ben Deschaine?

21 A Yes.

22 Q If you look at the e-mail from Kevin Mulleady on the  
23 first page dated April 18th at 6:33 p.m. to Mr. Deschaine  
24 Mr. Deschaine writes, "Sure. Here is latest" -- I'm sorry  
25 Kevin Mulleady writes, "Sure. Here is latest materials on



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1 consumer and healthcare. I imagine those were the funds of  
2 interest. Didn't have a chance to get a full briefing from  
3 Martin."

4 In response Mr. Deschaine writes to Kevin Mulleady  
5 on April 18, 2012, "What are firm assets under management?"

6 In response Mr. Mulleady writes to Martin Shkreli  
7 on April 18th, 2012, "Please advise."

8 And then what does Martin Shkreli write in  
9 response to Mr. Mulleady on April 18th, 2012, at 11:14 p.m.?

10 A "55M."

11 Q Let's go Tab 21, Government Exhibit 361. It appears to  
12 originate with an e-mail from Spencer Spielberg on  
13 August 16th, 2012 to Kevin Mulleady with a carbon copy to  
14 Martin Shkreli with a title Retrophin. He writes, "Kevin,  
15 last conversation you quoted my account being valued at  
16 \$42,491 give or take a few percentage points a few weeks  
17 ago. I know you guys aren't using NAV anymore. When will  
18 we get some of these statements from May, June, July, et  
19 cetera? When is the money, dollar sign, officially all  
20 going into this Retrophin? When do we have to decide  
21 whether I want to continue into that investment or how much  
22 I want to continue to invest? I think MSMB is doing a great  
23 job from what you've told me, but I would like to know  
24 definitively in writing where my options lie before I make a  
25 decision. I look forward to hearing back formally. Spencer

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1 Spielberg."

2 And then if we could look at the top two e-mails  
3 in this chain, Mr. Mulleady forwards this e-mail to Martin  
4 Shkreli on August 20th, 2012, and he writes, "How would you  
5 like me to reply to this?" And Martin Shkreli writes in  
6 response Mr. Mulleady on August 20th, 2012, what does he  
7 write?

8 A "I would write him the option."

9 Q If we go to the next exhibit, Government Exhibit 362.  
10 Does the bottom e-mail appear to be the same e-mail from  
11 Spencer Spielberg that we just read in the prior exhibit?

12 A Yes.

13 Q If we scroll up to Mr. Mulleady's response, it's dated  
14 August 20th, 2012, and he states: "Hello, Spencer, I was  
15 out of the office Friday. Catching up to e-mails now. As  
16 mentioned, your account valuation and options cannot be  
17 definitive until this round of financing is complete for  
18 Retrophin. The estimate I gave you of \$42,491 is based upon  
19 Retrophin having a valuation of \$80 million. The response  
20 from investors has been extremely positive and we hope to  
21 have the round done shortly. Once we finish this round and  
22 finalize that number, we will send out a formal letter with  
23 exact amount in your options. We will be offering the  
24 investors the option to redeem for cash or stock of  
25 Retrophin. In your case, full cash, full stock or 25,000 in

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1 cash and the rest in stock. We hope to have a clearer  
2 picture for our investors in the near future. Thank you for  
3 you patience.

4 Kevin."

5 And then in response what does Mr. Spielberg write  
6 to Mr. Mulleady with a carbon copy to Martin Shkreli?

7 A "Kevin, I appreciate you getting back to me. I look  
8 forward to receiving the info. Thanks again, SS."

9 Q If we look at Tab 23, Government Exhibit 363. Appears  
10 to be an e-mail chain between Martin Shkreli and Kevin  
11 Mulleady ending on November 13th, 2012. If we turn to the  
12 second page of this exhibit, the e-mail on top, the e-mail  
13 at the top of the page, from the prior page it's an e-mail  
14 from Kevin Mulleady to Martin Shkreli dated November 12th,  
15 2012.

16 Mr. Mulleady writes, "Martin, could we put  
17 together a contract regarding Geller's wire? I will have  
18 him send in the morning. He was unable to do it today.  
19 Basic terms, paid and transferred immediately upon deposit  
20 of Alan Geller's wire of the \$200,000 on 11/13/12;  
21 20 percent sent to me, 40,000; past three pay periods of  
22 9/15, 9/30 and 10/30, retroactively sent to me \$5,208.33  
23 times three equals \$15,624.99.

24 200,000 worth of Retrophin stock at 25 million  
25 valuation and no restriction transferred to me. I have a

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1 few other people considering putting in 100,000 as well if  
2 we want to keep the window open. Let me know. Thank you  
3 Kevin."

4 And if we go to the prior -- the first page and if  
5 we look at Mr. Shkreli's response to Mr. Mulleady on  
6 November 12th, 2012. What does he write there?

7 A "55K plus a bunch of stock plus a reset on Alan's stock  
8 is a lot. Considering I would need Board approval, this may  
9 not work."

10 Q Let's go to Tab 26, Government Exhibit 254. The bottom  
11 e-mail is from Ron Tilles dated February 4th, 2013, to  
12 Martin Shkreli with a title Redemption. Mr. Tilles writes,  
13 "Martin, Molly would like to know her status on what she  
14 would get back if cash for shares upon redemption from the  
15 hedge fund. She is trying to decide if she will convert a  
16 portion to shares.

17 Sy Block has the same question.

18 Diandra Douglas would like to know if you have a  
19 better idea of cash. She will get back next week. She  
20 chooses to redeem for cash. Steven Rosenfeld... R."

21 And let's look at Mr. Shkreli's response to  
22 Mr. Tilles dated February 6th, 2013, at 1:32 a.m.

23 What does Mr. Shkreli write to Mr. Tilles?

24 A "Everyone will get some amount of stock no matter what.  
25 No one can get full cash. The fund invested a lot into

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1 Retrophin."

2 Q Let's go to Tab 28, Government Exhibit 261. This  
3 appears to be an e-mail exchange between Mr. Greebel and  
4 Mr. Shkreli with the last e-mail dated February 21st, 2013.  
5 If we look at the bottom of the page, it's an e-mail from  
6 Mr. Greebel to Mr. Shkreli on the same day, February 21st,  
7 2013, the title being, "Response to Rosenwald. Please write  
8 up and reply to them ASAP."

9 Mr. Greebel writes, "Lawyer called back. Lindsay  
10 wants 80,000 total and not less?"

11 If we go to the top of the next page, to complete  
12 Mr. Greebel's e-mail. "I told him your view and conveyed  
13 your analysis. They think you did a lower price deal before  
14 the pipe because the date on the stock certificate is  
15 1/28/13. He also said you took Lindsay's money and gave the  
16 outside investors a better deal than you gave Lindsay and he  
17 is incredibly pissed off and disappointed. They will not  
18 accept a counteroffer and if you do not consent by close of  
19 business today, they will follow up with a lawsuit."

20 That's signed Evan Greebel.

21 And if we go back to the first page and highlight  
22 the next couple e-mails in the chain, what does Mr. Shkreli  
23 write to Mr. Greebel in response to that e-mail?

24 A "Accept."

25 Q Mr. Greebel then responds to Mr. Shkreli saying, "Okay.

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1 Either wants to be on the registration statement or get  
2 freely-traded stock. Are we going to deal with that next?"

3 And then the next two e-mails in the chain. What  
4 does Mr. Shkreli write to Mr. Greebel in response?

5 A "You will get freely-traded stock from three different  
6 parties totaling 56,000 or whatever makes 80,000."

7 Q And then in response Mr. Greebel writes, "Okay."

8 Let's go to Tab 29, Government Exhibit 262. This  
9 is an e-mail exchange between Evan Greebel and Martin  
10 Shkreli dated February 22nd, 2013.

11 The first e-mail is from Mr. Shkreli to  
12 Mr. Greebel with a title Sarah Hassan. Can you please read  
13 Mr. Shkreli's e-mail?

14 A "Sarah equals same situation as Lindsay. Also Fred  
15 Hasson's daughter."

16 Q In response Mr. Greebel writes to Mr. Shkreli, "I  
17 figured. How much do they want?"

18 If we turn the Tab 30, Government Exhibit 263.  
19 This is an e-mail exchange between Mr. Greebel and  
20 Mr. Shkreli ending on February 25th, 2013.

21 This is an e-mail exchange. We'll start on Page 2  
22 of this document with the e-mail from Mr. Greebel to Martin  
23 Shkreli dated February 22nd, 2013, at 8:59 p.m.

24 Mr. Greebel writes -- and its title is Response to  
25 Rosenwald. "Please write up and reply to them ASAP."

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1 Mr. Greebel writes, "When? Didn't get yesterday. I'm  
2 speaking to Tim's new lair this a.m. Please send me  
3 whatever he signed."

4 And if we could then go up to the next set of  
5 e-mails on this page.

6 What does Mr. Shkreli write to Mr. Greebel?

7 A "Need to retain one of your litigation partners. I  
8 want to turn up the heat on Tim."

9 Q And if we scroll up to the next two e-mails.

10 Mr. Greebel writes to Mr. Shkreli, "Instead of a  
11 counter you want to prepare a complaint?"

12 And what does Mr. Shkreli write to Mr. Greebel?

13 A "Yes, LOL."

14 Q And if we go to the first page of this document, the  
15 continuation of the chain at the bottom. Mr. Greebel then  
16 writes, "Okay. Let me see when they are available. I want  
17 to file Q with/PH and S dash and S1 Friday/Mon, so I need  
18 rest of retainer."

19 And then what does Mr. Shkreli write in response?

20 A "Please don't bother me over this until I get a second  
21 to sort things out. You'll get your money."

22 Q And then in response Mr. Greebel writes, "Okay. You  
23 send TT dock, please call so lit can see the field."

24 And then Mr. Shkreli writes in response?

25 A "Yep, sending now."

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1 Q Okay. Let's go to Tab 31, Government Exhibit 112-1.

2 We'll start on the page ending 963. This appears  
3 to be an e-mail chain between Spencer Spielberg and Martin  
4 Shkreli ending on February 28th, 2013. This appears to be  
5 that limited partners' wind-down e-mail, that's -- that's  
6 how it's been referred to in the trial on September 9, 2012,  
7 from Mr. Shkreli; is that correct?

8 A That's correct.

9 Q And if we scroll up to the top of the page, on  
10 January 22nd, 2003 [sic], Mr. Spielberg writes to  
11 Mr. Shkreli, "Martin, I hope all is well. Kevin Mulleady  
12 updated me a bit on some of the recent news with you guys.  
13 I realize I'm an extremely small piece of the puzzle, but to  
14 say I feel in the dark is an understatement. I had 0 idea  
15 how much equity I have with MSMB, Retrophin and the other  
16 investments. I haven't gotten a statement or anything in  
17 what seems like almost four to five months. When can I  
18 expect to get some kind of clarification. Spencer  
19 Spielberg."

20 If we go to the prior page, look at the e-mail on  
21 the bottom Mr. Spielberg forwards his e-mail from the prior  
22 page approximately a month later on February 21st, 2013, to  
23 Mr. Shkreli and Mr. Mulleady. He writes, "Martin, this is  
24 the second e-mail I'm sending regarding my investment with  
25 MSMB. I would greatly appreciate someone getting back to



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1 me. When will I receive a tax document from MSMB? Spencer  
2 Spielberg."

3 In response if we could just look at the top  
4 portion of this page.

5 What does Mr. Shkreli write to Mr. Spielberg on  
6 February 21st, 2013?

7 A "Hey, Spencer, you should have received a K1. Did you  
8 not?"

9 Q In response, if we could scroll up, Mr. Spielberg  
10 writes, "Martin, I formally want to redeem my investment at  
11 MSMB Capital Management. Please let me know when I can  
12 expect my funds and how I will receive them. Sincerely  
13 Spencer Spielberg."

14 And if we go to the first page, that e-mail was  
15 sent on February 26th, 2013.

16 Mr. Spielberg then writes to Mr. Shkreli on  
17 February 28, 2013, with a CC to Kevin Mulleady and then an  
18 e-mail address Kevin@stonecornergroup.com. Mr. Spielberg  
19 writes, "Martin, without proper reporting I am no longer  
20 willing to invest with MSMB. When will my investment be  
21 redeemed and in my possession? I expect to hear back from  
22 you immediately on this. This is now my second e-mail to  
23 you. Sincerely, Spencer Spielberg."

24 And then what does Mr. Shkreli write to  
25 Mr. Spielberg in response?

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1 A "I will handle shortly. Kevin is no longer with the  
2 firm."

3 Q If we look at Tab 33, Government Exhibit 276. Please  
4 look at the top two e-mails in this chain. The top e-mail  
5 is from Kevin J. Stanfield on March 12, 2013, at 6:05 p.m.  
6 to Evan Greebel with the title Forward Revised Settlement  
7 Agreement. Mr. Stanfield writes, "Evan, Dr. Rosenwald  
8 signed the agreement. Please let me know if Martin has done  
9 to same. Thanks, Kevin."

10 In response Mr. Greebel writes to Mr. Shkreli on  
11 March 13th, 2013, with a title LR Settlement Agreement, with  
12 an attachment.

13 What does Mr. Greebel write there?

14 A "I wasn't sure who else knows about it. Did not CC  
15 your assistants. Please sign and revert."

16 Q If we go to Government Exhibit 112-4. It's behind  
17 Tab 35 of your binder.

18 We can start on the prior page. The bottom e-mail  
19 is an e-mail from Mr. Shkreli to Mr. Spielberg dated  
20 March 13, 2013, at 6:35 p.m. entitled Stock. Can you please  
21 read Mr. Shkreli's e-mail?

22 A "Hi Spencer, We sent you a certificate for 3,695  
23 shares. This represents the total balance of your  
24 MSMB Healthcare LP investment. I am willing to buy those  
25 shares for the last market price 490, for after total of

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1 \$18,105.50. This is all I can legally pay for the stock.  
2 If you want \$45,000 worth of stock, you should ask Kevin  
3 Mulleady to help. Basically you would need \$26,894.50 worth  
4 of cash or 5,489 shares to finalize our agreements to get  
5 you to \$45,000. Our MSMB group would be willing to give you  
6 half of those shares if Kevin provided you the other half.

7 Let me know what you think. Martin Shkreli."

8 Q If we go to the top of this page, Mr. Spielberg and  
9 from the prior page it's dated March 13th, 2013.  
10 Mr. Spielberg responds to Mr. Shkreli as follows: "Martin,  
11 this is not what we agreed to. I really don't understand  
12 what Kevin would have do with my investment. You agreed to  
13 wiring me 25,000 in cash and sending me 20,000 worth of  
14 stock, about 4,081 shares based on the \$4.90 stock price. I  
15 invested 25,000 of my hard-earned money with you in August  
16 of 2011. I did my research and was really impressed with  
17 your résumé and the type of return you could provide through  
18 you MSMB group. I'm not sure what you want me to do as an  
19 investor with an e-mail like this. But I would really  
20 appreciate if we could move forward on our original  
21 agreement from last week so we can both move on to more  
22 important things. Sincerely, Spencer Spielberg."

23 If we go to the first page and look at  
24 Mr. Shkreli's response on March 13th, 2013.

25 Can you please lead that for the jury.

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1 A "We have not agreed to anything until we sign a  
2 document. You own that much stock and that's what we owe  
3 you. I would like to make sure you make a great return on  
4 your investment with MSMB. However, I think for you to get  
5 the deal I mentioned earlier this week, we need Kevin's help  
6 to pitch in and make you whole. Our lawyers, CC'd, are  
7 reaching out to him to make sure this happens. The only  
8 thing I can promise until -- the only thing I can promise  
9 you until we sign a further agreement is the stock you own  
10 through the fund."

11 Q And if we look at the top of this page, to  
12 Mr. Spielberg's response to Mr. Shkreli, the next day.  
13 March 14th, 2013 with a CC to Evan Greebel, Mr. Spielberg  
14 writes, "Martin on 3/7/13 you agreed to redeeming my  
15 investment for 25,000 in cash and 20,000 worth of RTRX.  
16 Today I received a FedEx with 3,695 shares currently valued  
17 at \$17,551.25. I'm owed 515 more shares of RTRX and 25,000  
18 in cash. Kevin Mulleady is former employee at MSMB --  
19 excuse me, Kevin Mulleady, a former employee at MSMB, has  
20 nothing do with my investment with MSMB. If he owes shares  
21 to your group, that is an outside issue with 0 bearing on my  
22 redemption. That should not hold up my redemption at all.

23 I'm becoming very frustrated with this and I would  
24 like to work this out on the phone amicably between the two  
25 of us. You can call me any time," with two phone numbers

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1 listed there. "I would greatly prefer to us settling this  
2 prior to me having to take legal recourse to receive my  
3 equitable share. Sincerely, Spencer Spielberg."

4 If we go to Government Exhibit 77 behind Tab 36 of  
5 your binder.

6 This appears to be an e-mail chain between  
7 Mr. Greebel and Mr. Shkreli ending on March 21st, 2013.  
8 Starting on Page 3 of this e-mail, appears to be an e-mail  
9 from Ms. Holland of -- entitled Contract with University of  
10 Edenberg. She writes, "Dear Martin, I am still awaiting a  
11 response from your legal department. Please could you  
12 advise on the progress of the agreement."

13 Please scroll up.

14 Mr. Shkreli writes to Mr. Greebel on March 21st,  
15 2013, what does he write, Agent Braconi?

16 A "Why can't you do your job. It is incredible."

17 Q If we go to the second page of this document ending in  
18 704 to see Mr. Greebel's response on March 21st, 2013. He  
19 writes, "That was on my plate for this afternoon. Have been  
20 dealing with your accountants on your audit. Spoke to  
21 Heskett. I told him the importance of getting Fearnow done.  
22 He said he was going to speak to Mike today. He said Mike  
23 wants to talk to you and I advised that you were on vacation  
24 and that it would be great to wrap up the two agreements I  
25 sent him ASAP."

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1           If we scroll up to the next e-mail Mr. Shkreli's  
2 response to Mr. Greebel on March 21st, 2013, what does he  
3 write there?

4       A     "Bullshit. How long does it take to edit a consulting  
5 agreement sent three weeks ago. I am really starting to get  
6 the feeling that you are in a" --

7       Q     If we scroll up. Mr. Greebel writes in response to  
8 Mr. Shkreli, "I am literally sending the document now."

9           And if we scroll up to Mr. Shkreli's response to  
10 Mr. Greebel on March 21st, 2013 at 1:05 p.m., what does he  
11 say?

12       A     "Nope, you're done. Fenwicks turn."

13       Q     If we go to first page of this document and look at the  
14 bottom response from Mr. Greebel. He writes, "Up to you.  
15 I'll send it to you in ten minutes. You can do what you  
16 want with it. I do need to discuss other stuff with you at  
17 your convenience (primarily Jackson and George)."

18           In response Mr. Shkreli to Mr. Greebel on  
19 March 21st, 2013 at 1:07 p.m., what does he write there?

20       A     "No. Deleted from your system. I can't handle this.  
21 You don't do it until I remind you and you embarrass me."

22       Q     And if we scroll up. Mr. Greebel writes in response,  
23 "I literally was doing it when you sent that."

24           And what does Mr. -- if we could scroll up some  
25 more. What does Mr. Shkreli write to Mr. Greebel in

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1 response?

2 A "You can't wait three weeks to do my contracts."

3 Q And then if we just look at the very top e-mail, the  
4 last e-mail from Mr. Greebel to Mr. Shkreli on March 21st,  
5 2013, at 6:18 p.m., he writes, "You are right. I'm sorry.  
6 It will not happen again."

7 Government Exhibit 113-10, Tab 37. This is on  
8 e-mail exchange between Martin Shkreli and Michael Lavelle  
9 dated March 27, 2013. And who is Michael Lavelle?

10 A He is an investor in healthcare.

11 Q MSMB Healthcare?

12 A Yes.

13 Q If we look at the very last page of this document.  
14 We'll just look at the first e-mail from Mr. Lavelle to  
15 Mr. Shkreli dated March 27th, 2013, with the title Calls.

16 "Hi Martin, I do not understand why you have yet  
17 to call. If you can imagine, my conversations with Kevin  
18 have given rise to significant concerns. I always believed  
19 that one should hear both sides of the story before making  
20 judgments, but that has been impossible to schedule. I do  
21 not want, and would hope you feel the same, our relationship  
22 the become adversarial. So please let me know when we can  
23 speak over the next few days."

24 After this e-mail there is a series of exchanges  
25 between Mr. Shkreli and Mr. Lavelle; is that correct,

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1 Agent Braconi?

2 A Correct.

3 Q And if we go to the very first page of this document  
4 Mr. Lavelle writes on March 31st, 2013, "I want to  
5 understand a number of things. I had a mark to mark it on  
6 my 1 million investment in MSMB as circa 1.25 million. I  
7 put forward a capital call on that position but have heard  
8 nothing. The redemption procedure remains unclear to me. I  
9 do not understand what exactly was in MSMB, how big was the  
10 fund? What was it actually invested in (including  
11 Retrophin). Who audited that fund? Retrophin was always  
12 pitched to me as additive to MSMB, not as an alternative to  
13 it. I was told by both you and Kevin that Retrophin was an  
14 MSMB option. I was not given an option to debate transfer  
15 from MSMB and want to understand it.

16 On what basis was the reverse of MSMB into  
17 Retrophin agreed? On what valuation exists? Who approved  
18 it? Did Retrophin raise private equity? What are the  
19 details of this pipe and was it offered to all shareholders?  
20 Who independently audited it?

21 Michael."

22 In response Mr. Shkreli writes an e-mail to  
23 Mr. Lavelle on March 31st, 2013 at 2:35 p.m. with a carbon  
24 copy to EvanGreebel@Pattonlaw.com. What does he write?

25 A "Sure. We will get back to you ASAP with some



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1 answers."

2 THE COURT: How much do we have? This might be a  
3 good time for the jurors to take a mid-morning break.

4 MS. KASULIS: Yes, Your Honor.

5 THE COURT: Okay. Why don't we take ten minutes.  
6 Please don't talk about the case and we will reconvene.

7 Thank you.

8 (Jury exits.)

9 (The following matters occurred outside the  
10 presence of the jury.)

11 MR. BRAFMAN: Your Honor, if my memory is correct,  
12 we have noted our objections to e-mails coming in about  
13 Lavelle and related to Lavelle. In Spielberg because it's  
14 clear from the material that Martin had little, if anything,  
15 to do with their decision to come in with the fund,  
16 certainly with respect to Lavelle, and I just want to note  
17 what I think is -- and I think Your Honor overruled our  
18 objection that Mr. Shkreli's statements were in effect  
19 admissions and that the e-mail chain would then come in.

20 I just want to reiterate your objection. Now that  
21 you actually see the thrust of the e-mails, they clearly  
22 imply something wrong by Mr. Shkreli in connection with both  
23 Lavelle and Spielberg and yet the jury has no understanding  
24 of how they came to be in the fund, no understanding who  
25 brought them into the fund, no understanding that

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1 Mr. Shkreli, if these people were to testify, I think would  
2 be somewhat in the clear about these two individuals in  
3 particular.

4 And I think the evidence that's coming in, you  
5 know, I just want to note the objection again precisely what  
6 we have feared is coming true because the implication  
7 through the Agent and, you know, not faulting the agent, but  
8 the implication with these records is that Mr. Shkreli has  
9 done something in the -- has committed a fraud with respect  
10 to Spielberg and Lavelle, and that's not a correct inference  
11 that the jury has a right to draw from these e-mails, Judge.  
12 It's just wrong.

13 THE COURT: I think what we've been talking about,  
14 sir, is the distinction between the circumstances under  
15 which certain investors came into the fund and what happened  
16 after the investment. These e-mails appear to concern the  
17 post-investment issues and the direct conversations that  
18 these investors were having with Mr. Shkreli and that's why  
19 they were admissible.

20 MR. BRAFMAN: I know, but the conversations they  
21 had with Mr. Shkreli as a general proposition would only be  
22 relevant if, in fact, it relayed to something Mr. Shkreli  
23 did wrong with respect to those individuals. And trying to  
24 negotiate a result in what might not be a fraudulent  
25 transaction is not evidence of fraud. And what the jury is

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1 now doing is they are speculating that both Spielberg and --  
2 and Lavelle are like the other people who did testify and  
3 that Mr. Shkreli's scurrying around to try and resolve their  
4 issues, is him doing something wrong when, in fact, he may  
5 be doing something right and the jury has no way of knowing.

6 THE COURT: The substance of the e-mails, for  
7 example, with Mr. Spielberg were about his agreement or a  
8 difference of opinion about what Mr. Spielberg thought  
9 Mr. Shkreli had told him about his redemption and what  
10 Mr. Spielberg thought. He also made clear at that point in  
11 the post-investment and during this redemption period  
12 originally had nothing to do with what was going on  
13 currently between Mr. Spielberg and Mr. Shkreli.

14 And with Mr. Lavelle, he's reaching out directly  
15 to Mr. Shkreli and trying to understand irrespective of  
16 whatever Mr. Mulleady may have said, and he acknowledges  
17 that Mr. Mulleady and he had conversations. But what  
18 Mr. Lavelle was saying to Mr. Shkreli is, "I have these  
19 additional questions."

20 This is post-investment. It is not targeting  
21 circumstances under which these two individuals came to be  
22 part of this limited -- the limited partnership. And really  
23 the focus is on the redemption --

24 MR. BRAFMAN: I understand.

25 THE COURT: -- verdict.

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1 MR. BRAFMAN: I understand.

2 THE COURT: So...

3 MR. BRAFMAN: But if they are not fraudulently  
4 induced into coming into the fund or if they're in the fund  
5 because of Mr. Lavelle's nephew in one occasions -- I'm  
6 sorry Mr. Tilles' nephew or they're in the fund because of  
7 something said by Mulleady, and if we can show, assuming  
8 they had testified, that they -- that Mr. Shkreli did  
9 nothing wrong in connection with their decision to invest,  
10 the fact that he's trying to get them paid is not evidence  
11 furthering a fraud because they are not in this case as a  
12 victim of the fraud.

13 We are getting naked e-mails about people the jury  
14 doesn't know and they can only speculate that the reason  
15 they're getting those e-mails is because these people, like  
16 the other investors, were in the fund because something  
17 Mr. Shkreli did was wrong and, A, that's not true.

18 And B there's no evidence about that, so they're  
19 left to speculate. And I renew my objection and I ask  
20 Your Honor, you know, I know it's late in the game but we  
21 did object to going in that I think you have to strike this  
22 stuff at this point or give an instruction at least and tell  
23 the jury that there's no evidence that Mr. Lavelle or  
24 Mr. Spielberg are victims of a fraud and that the evidence  
25 of Mr. Shkreli negotiating with them is not to be assumed by

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1 them to refer to them as being victims of any sort.

2 How else do they know what to do with this?

3 THE COURT: I can tell the jury how to interpret  
4 the evidence and what findings they should make?

5 MR. BRAFMAN: No. But, Judge, you can't leave  
6 them to just speculate about who these people are and why  
7 we're hearing evidence about that they're trying to get --  
8 get their investment back when there's no evidence at all  
9 that their investment is part of the fraud.

10 MS. KASULIS: Your Honor, if I could just address  
11 this issue. Again, I think we have gone over this  
12 *ad nauseam*. We are not arguing that Mr. Lavelle and  
13 Mr. Spielberg, when they made their original investment,  
14 that there were any misrepresentations to them. What these  
15 e-mails illustrate is they were told that their investments  
16 were performing in a certain way. Mr. Shkreli sent an  
17 e-mail to them saying they could redeem their investment for  
18 cash and stock, and this is their response when they're not  
19 getting what they thought that they were owed because of the  
20 misrepresentations that Mr. Shkreli and his co-conspirators  
21 made to them post-investment.

22 And that's what these e-mails illustrate. And so  
23 we are not arguing about the initial investment into the  
24 funds. What we are admitting these documents to show that  
25 they were, in fact, told that their investments were

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1 performing a certain way, they could redeem them in a  
2 certain way once the fund was wound down, and that they were  
3 then not able to redeem in the fashion that they had been  
4 told that Mr. Shkreli would let them redeem.

5 That's what these e-mail illustrate. They are  
6 admissible by Mr. Shkreli's statements, and so I believe  
7 Your Honor has already ruled, but just to make the record  
8 clear again, this is why we believe that these are relevant  
9 and admissible documents.

10 THE COURT: I have made rulings, sir.

11 I mean, certainly the defense is free to argue to  
12 the jury as to what interpretation they can give to these  
13 exhibits and to make other arguments. I do not think it is  
14 appropriate for me having made a ruling about the  
15 admissibility of these documents to then instruct the jury  
16 as to what they may or may not find with regard to issues in  
17 this case.

18 The Government has been clear that they're not  
19 alleging that the original investment decision was procured  
20 by fraud. And I think they've explained and my  
21 understanding has been the basis for my ruling which kind of  
22 I'm reluctant at this point to change, but I note your  
23 objection.

24 MS. KASULIS: Your Honor, can I take a quick  
25 break?

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1 THE COURT: Yes.

2 MS. KASULIS: Thank you.

3 (Recess taken.)

4 (Continued on next page.)

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## Proceedings

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1 MR. BRAFMAN: I want the record to be clear. We  
2 don't have evidence that the Spielberg and Lavelle  
3 disagreement stemmed from a crime. So in the context that it  
4 was a civil, if it was a civil matter, and all Mr. Shkreli  
5 was doing was negotiating a repayment of a civil matter, it  
6 would not be evidence of fraud if Mr. Shkreli told things to  
7 Mr. Spielberg or Mr. Lavelle in the context of a  
8 renegotiation or the repayment of something that was legal to  
9 begin with. It would not necessarily be an admission of  
10 fraud if he says to me, 'You told me I get back 50,000 shares  
11 now you're telling me 250,000 shares,' or words to that  
12 effect, in connection with a civil disagreement. This stuff  
13 happens all the time where the parties negotiate. So we  
14 don't even know that the investment by Lavelle and Spielberg  
15 arises out of a crime.

16 THE COURT: All right, thank you. Did the  
17 Government want to be heard in response?

18 MS. KASULIS: No, your Honor.

19 THE COURT: We will get the jury back then.

20 MS. KASULIS: Your Honor, just a housekeeping  
21 matter. From yesterday the transcript it looks like the list  
22 of exhibits from the end was not the full list we admitted.  
23 We're going to revise the list to reflect what was moved into  
24 evidence. In that review there were four documents, 122-1,  
25 122-4, 113-10, 112-7 that your Honor had already moved on and



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1 I had inadvertently -- sorry, ruled on -- and I inadvertently  
2 left that out of the long list that I read. I want to move  
3 those exhibits into evidence to make sure the record is clear.

4 THE COURT: I think that was Mr. Agnifilo's  
5 responsibility yesterday to lodge any objections.

6 And so, she is putting in additional exhibits, do  
7 you object?

8 MR. AGNIFILO: I --

9 THE COURT: This might be in the universe of  
10 exhibits that we had already ruled upon, according to  
11 Ms. Kasulis, could you check and let me know?

12 MR. AGNIFILO: Let me just double check.

13 (Jury enters the courtroom.)

14 (Whereupon, the witness resumes the stand.)

15 THE COURT: We have all jurors present. Please have  
16 a seat everybody.

17 Ms. Kasulis, you may resume.

18 MS. KASULIS: Thank you, your Honor. And just to  
19 make sure the record is accurate, the Government moves  
20 Exhibits 112-1, 112-4, 112-7, 113-10 into evidence.

21 MR. AGNIFILO: No objection.

22 THE COURT: We will receive those exhibits.  
23 Government Exhibits 112-1, 112-4, 112-7, 113-10 are admitted.

24 (Government's Exhibit Numbers 112-1, 112-4, 112-7,  
25 and 113-10 so marked and received in evidence.)

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1 MS. KASULIS: Thank you, your Honor.

2 BY MS. KASULIS:

3 Q Special Agent Braconi, I want to direct you to tab 38 of  
4 your binder, Government's Exhibit 283. This is an e-mail  
5 exchange between individuals including Mr. Greebel,  
6 Mr. Shkreli and Michael Fearnow dated April 10, 2013, that's  
7 the last e-mail in the chain, with the title amendments to  
8 purchase agreements Troy Fearnow.

9 If we go to the bottom of the page starting with the  
10 e-mail from Michael Fearnow, April 9, 2013, to Martin Shkreli  
11 with a carbon copy to Evan Greebel. Mr. Fearnow writes,  
12 "Martin, please send me an e-mail that breaks down the share  
13 distribution for the \$100,000 shares and I will send to the  
14 transfer agent." It's just signed on the next page by Michael  
15 Fearnow.

16 If we then go to the full e-mail by Mr. Greebel in  
17 response on April 10, 2013, to Mr. Fearnow and Mr. Shkreli,  
18 what does he state there on the first line of that e-mail?

19 A "The 50,000 shares that were owed to Marek Biestek should  
20 be broken down as follows."

21 Q Read that next sentence.

22 A "30,000 shares shall be issued in the name of Lindsay A.  
23 Rosenwald MD and such shares shall be delivered to."

24 Q Is that the Katten Muchin Rosenman LLP?

25 A Yes.

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1 Q To the attention to Evan L. Greebel, Esquire?

2 A Yes.

3 Q Could you read the next sentence please?

4 A "20,000 shares shall be issued in the name of Thomas P.  
5 Koestler and delivered to."

6 Q Is it the same address the, Katten Muchin address, with  
7 the same attention to Evan L. Greebel?

8 A Yes.

9 Q And the next sentence?

10 A "The 50,000 shares that were owed to Edmund Sullivan  
11 shall be issued in the name of Lindsay A. Rosenwald, MD, and  
12 such shares shall be delivered to."

13 Q And again, Katten Muchin, with attention Evan Greebel?

14 A Yes.

15 Q Last sentence?

16 A "The transfer agent can combine the two of certificates  
17 for Rosenwald into one certificate for 80,000 shares."

18 Q Turn now to tab 39, Government's Exhibit 284, an e-mail  
19 exchange between Evan Greebel and Martin Shkreli with the last  
20 e-mail April 17, 2013. Start on the second page of this  
21 document. Mr. Greebel writes to Mr. Shkreli April 14, 2013,  
22 he writes, "What do you want to do about Lavelle? Can I send  
23 him the draft agreement?"

24 In response Mr. Shkreli writes on April 16, 2013 to  
25 Mr. Greebel, what does he state there?

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1 A "Lavelle isn't going anywhere."

2 Q We go to the first page, there is a response that is  
3 redacted for Mr. Greebel. Then Mr. Shkreli writes to him on  
4 April 16, 2013, what does he write there?

5 A "Are you back? Can you do me a favor and e-mail Sarah  
6 and apologize for being on vacation, LOL."

7 Q Mr. Greebel then writes in response to Mr. Shkreli on  
8 April 16, 2013. He writes, "Yes, I will e-mail her in the AM.  
9 Did the numbers and structure that she proposed work for you?"

10 In response, what does Mr. Shkreli write to  
11 Mr. Greebel?

12 A "Can you resend."

13 Q In response to Mr. Shkreli's e-mail Mr. Greebel writes on  
14 April 17, 2013, "Sure, will forward to you."

15 Tab 40, Government's Exhibit 285, an e-mail exchange  
16 between Mr. Shkreli and Mr. Greebel on April 17, 2013, I  
17 believe the same day as the same e-mail on the prior exhibit.  
18 Start on the bottom of this e-mail chain, Sarah Hassan sends  
19 an e-mail to Martin Shkreli on April 5, 2013 with the title  
20 settlement and release agreement. She writes, Hi Martin,  
21 sorry for the delay. I was hoping to get this back to you  
22 yesterday. Looking forward to hearing from you soon. Best  
23 Sarah."

24 If we go farther up, Mr. Shkreli forwards that email  
25 to Mr. Greebel on April 8, 2013. And then in response to

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1 Mr. Shkreli, Mr. Greebel writes on April 17, 2013, "This is  
2 what Sarah sent."

3 If we scroll up, Mr. Shkreli responds to Mr. Greebel  
4 on April 17, 2013, can you please read that e-mail for the  
5 jury?

6 A "Couple minutes. In section one the interest is in MSMB  
7 Capital Management LP. Next, it should contemplate releasing  
8 any liability from Retrophin and that's one of the reasons or  
9 benefits of the exchange. Retrophin will be making the  
10 payment. Other than that we're good to go."

11 Q If you turn to tab 41, it's Government's Exhibit 291, we  
12 start on the -- this is an e-mail exchange between Mr. Shkreli  
13 and Evan Greebel with the last e-mail dated April 25, 2013.  
14 If we start on the very last page of this exchange Mr. Greebel  
15 writes on April 24, 2013, "His lawyer keeps e-mailing me for  
16 an answer on their proposal. What do you want me to do?"

17 If we look at the bottom of the page before that,  
18 Mr. Shkreli writes to Mr. Greebel on April 24, 2013, the  
19 subject is Koker, spelled K-O-K-E-R. Can you read  
20 Mr. Shkreli's response?

21 A "First all his name is Kocher, get it right. This is  
22 embarrassing. Next, why are we changing the deal? I'm not  
23 changing terms."

24 Q In response, Mr. Greebel writes to Mr. Shkreli on  
25 April 24, 2013, as follows, "He said the terms that were

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1 originally agreed had three components cash, freely trading  
2 stock, and restricted stock. Previously we proposed the  
3 change in terms and they are asking to go back to the original  
4 terms that they claim were agreed."

5 In response Mr. Shkreli writes to Mr. Greebel on the  
6 same day, what is his response?

7 A "Can you be any less clear?"

8 Q If we then go to Mr. Greebel's response that starts on  
9 the prior page at the bottom on April 24, 2013, Mr. Greebel  
10 then writes, "Sorry for the confusion. Kocher's lawyer told  
11 me the deal is the following. Retrophin would buy back the  
12 23,564 shares he currently has at market price. He agreed  
13 that market price will be \$5.25. Kocher gets 50,000 freely  
14 trading shares. And Kocher gets an additional number of  
15 restricted shares that was to be determined.

16 "You told me to go back and offer the following.  
17 One, Retrophin would buy back the stock at \$123,711 agreeing  
18 to his first term. Kevin had to provide him 10,000 freely  
19 trading shares. And the other 40,000 freely trading shares  
20 would be provided, quote, "elsewhere." And three no  
21 additional stock. Kocher's response was as follows. One, buy  
22 back is agreed. Two, Kocher gets 40,000 freely traded shares.  
23 If can you not locate 10,000 more freely trading, shares  
24 Kocher gets an additional \$52,500, i.e. 10,00 multiplied by  
25 5.25. And three if the company does not want to give him

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1 restricted stock, he gets the cash equivalent of the number of  
2 shares that he was to get 10,000 to 20,000 multiplied by  
3 \$5.25."

4 In response Mr. Shkreli writes on the same day  
5 April 24, 2013, to Mr. Greebel, can you read his e-mail?

6 A "No. It's our deal. He gets 40,000 that's it. Given  
7 the stock price has moved I'm tempted to lower it."

8 Q Mr. Greebel then writes in response to Mr. Shkreli on the  
9 same day, "Okay, I will convey. His lawyer keeps saying that  
10 was not the deal."

11 Then in response Mr. Shkreli writes on April 24,  
12 2013 to Mr. Greebel, what does he write there?

13 A "Oh, well, tell him we welcome his litigation."

14 Q In response to Mr. Shkreli's e-mail Mr. Greebel writes on  
15 that same day April 24, 2013, "Okay. I assume you do not want  
16 to try and do anything regarding the KM10000 shares? I may be  
17 able to sell that he gets the 40,000 freely trading stock and  
18 some cash amount for the 10K shares that were supposed to come  
19 from KM."

20 Let's look at the next tab, Government's Exhibit  
21 292, an email exchange between Mr. Shkreli and Mr. Greebel  
22 with the last e-mail dated April 26, 2013 at 3:31 p.m. Mr.  
23 Greebel writes to Mr. Shkreli at 11:23 a.m. on that date,  
24 "What do you want to give David Geller?"

25 In response Mr. Shkreli writes, at 11:31 a.m., "I

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1 don't" -- you go ahead and read the response.

2 A "I don't even remember."

3 Q If we go to Mr. Greebel's response he states to  
4 Mr. Shkreli, "Okay, I'll call and feel him out."

5 Tab 43, Government's Exhibit 112-7, this is an  
6 e-mail exchange with the last e-mail dated May 1st, 2013,  
7 between Mr. Shkreli, Mr. Greebel and Spencer Spielberg. The  
8 title of this e-mail is settlement and release agreement.

9 At the bottom of the first page on April 26, 2013,  
10 Mr. Greebel writes, "It is not a lock-up period. Rather it is  
11 a restriction under the federal securities laws. The stock is  
12 not registered and there are fact specific restrictions on  
13 transfer and need for an opinion of counsel if you want to  
14 sell in less than a year."

15 THE COURT: Who is this e-mail directed to?

16 MS. KASULIS: It's not clear, your Honor, from this  
17 actual -- it looks like Spencer Spielberg on the prior page,  
18 he writes to Mr. Greebel with a CC to Martin Shkreli, if you  
19 look at the top regarding the shares. Then Mr. Greebel writes  
20 in response to that e-mail. It's just unclear who exactly  
21 he's writing to. But then in the next e-mail you see that  
22 Mr. Spielberg responds.

23 THE COURT: Thank you.

24 BY MS. KASULIS:

25 Q Mr. Spielberg responds to Mr. Greebel with a carbon copy



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1 to Martin Shkreli on April 30, 2013, "Martin/Evan, my  
2 apologies for not getting back to you guys yesterday. I've  
3 been a bit under the weather and was out of town over the  
4 weekend. As per Martin and my previous conversation I was  
5 able to receive tradeable, quote, unrestricted shares in RTRX.  
6 That was the whole reason I gave Martin my Merrill Lynch  
7 account number for transfer of those shares. I would greatly  
8 appreciate the liquidity, that way we could officially part  
9 ways and conclude our business. Please advise, Spencer  
10 Spielberg."

11 Then in response to Mr. Spielberg's e-mail  
12 Mr. Shkreli writes on May 1st, 2013, at 5:35 a.m. what does he  
13 write, Agent Braconi?

14 A "Might be able to work something out. How many shares do  
15 you have/need converted into liquid. One of the guys here  
16 would be willing to swap a illiquid for liquid shares with  
17 you."

18 Q If you scroll up to Mr. Spielberg's response on May 1st,  
19 2013, to Mr. Shkreli with a carbon copy to Evan Greebel, he  
20 writes, "I'd like to swap all 6,000 if possible."

21 Government's Exhibit 293, tab 44 of your binder, a  
22 one-page e-mail between Mr. Greebel and Mr. Shkreli with the  
23 last e-mail dated May 1st, 2013. We start on the bottom,  
24 Mr. Shkreli writes to Mr. Greebel with the title reach out to  
25 Kevin counsel, could you read what he writes there?

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1 A "Ask him to give up 10,000 shares in Kocher settlement."

2 Q Mr. Greebel then responds to Mr. Shkreli, "He will ask  
3 for more i.e. severance."

4 If we scroll up to Mr. Shkreli's response to  
5 Mr. Greebel, what does he say there?

6 A "No severance, just do what I ask."

7 Q If we scroll up to Mr. Greebel's response on May 1st,  
8 2013, he states, "Sure I will report back."

9 Let's go to tab 47, Government's Exhibit 295 --  
10 let's back up to tab 45, Government's Exhibit 295, sorry about  
11 that.

12 A one-page e-mail between Mr. Shkreli and  
13 Mr. Greebel dated May 3rd, 2013 is the last e-mail in the  
14 chain. If we start at the bottom Mr. Greebel writes to  
15 Mr. Shkreli on April 25, 2013, title Lavelle, "Do you want me  
16 to send him the settlement agreement? Attached is another  
17 copy for you."

18 In response Mr. Shkreli writes on May 3rd, 2013, to  
19 Mr. Greebel, what does he respond?

20 A "Looks good, send to him."

21 Q We then look at Mr. Greebel's response to Mr. Shkreli on  
22 May 3rd, 2013, at 5:09 p.m. he writes, "How much stock will he  
23 get? Also Kocher's lawyer keeps calling me. He wants more  
24 than you're willing to offer. He said Kocher has instructed  
25 him to prepare papers."

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1 In response Mr. Shkreli writes to Mr. Greebel on  
2 May 3rd, 2013, what does he write there?

3 A "Okay, don't let them sue us. Just capitulate with  
4 Kocher."

5 Q Let's turn to tab 47, Government's Exhibit 299. This is  
6 a two-page e-mail between Mr. Shkreli and Mr. Greebel dated  
7 May 9, 2013. Starting on May 8, 2013 at the very bottom with  
8 an e-mail from Mr. Greebel to Mr. Shkreli. If we look at that  
9 e-mail on the next page, the title again is Kocher.  
10 Mr. Greebel writes, "His lawyer keeps calling me regarding the  
11 stock portions. Please let me know who the shares are coming  
12 from so I can prepare the necessary documents."

13 In response Mr. Shkreli writes to Mr. Greebel on  
14 May 9, 2013, what does he say there?

15 A "Take from anyone. I don't care. Do the math."

16 Q In response Mr. Greebel writes to Mr. Shkreli stating,  
17 "Okay. Below is a break down of unallocated stock. 50K from  
18 Ron, 50K from Andy, and 100 from Tom, of which you told me  
19 previously that Tom is to get 50K. Marek and Ed's escrow  
20 shares have already been allocated. Koestler needs additional  
21 15K.

22 "I propose the following: 37,128 from Andy go to  
23 Kocher, the remaining 2,872 goes to you. And 15K from Tom  
24 goes to Koestler, and the remaining 35K goes to you. 50K will  
25 go to Tom as you previously directed. Alternatively, if you

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1 still need more freely trading stock, do not allocate the 35K  
2 from Tom and the remaining 2,872 from Andy. Ron's 50K will  
3 still outstanding and you can use it down the road if  
4 necessary. Please confirm if this works."

5 In response to this e-mail what does Mr. Shkreli  
6 write?

7 A "Works for me thanks."

8 Q Look at Government's Exhibit 301, behind tab 48 of your  
9 binder.

10 THE COURT: Excuse me. I see someone is drinking at  
11 the spectator section. You can't bring drinks into the  
12 courtroom. Please step out and throw it away.

13 There is no food and beverages allowed in the  
14 courtroom. I thought the signs on the door were pretty clear.  
15 I'm sorry to interrupt.

16 MS. KASULIS: May I proceed, your Honor?

17 THE COURT: Yes. I'm sorry.

18 This was Government's Exhibit --

19 MS. KASULIS: 301.

20 THE COURT: Thank you.

21 BY MS. KASULIS:

22 Q A two-page e-mail starting with an e-mail from Mr. Geller  
23 to -- Alan Greebel to Mr. Greebel and Mr. Shkreli May 16,  
24 2013. Then a series of back and forth between Mr. Shkreli and  
25 Mr. Greebel with the last e-mail dated May 16, 2013.

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1           We start with Alan Geller's e-mail on the first page  
2 to Mr. Greebel and Mr. Shkreli, can you read that e-mail to  
3 the jury?

4       A     "Yo, what's up fellas. I tried four or five times by  
5 phone and e-mail to get ahold you, Evan, all to no avail. I  
6 have to say I expected a little more from a New York attorney  
7 in terms of returning calls. Pretty rude, my man. I had  
8 heard from Kevin a long time ago that you were a real good  
9 guy. Well, I can't comment you personally, but business-wise  
10 I can only assume that you have made your multiple millions  
11 and returning a call is just not so important anymore.

12           "Anyway, I'm just trying to follow up and proceed  
13 with our plan going forward. Would like to know what is  
14 happening and what is next. Martin, I really appreciate your  
15 help with my son. He is very eager and excited to hang with  
16 you and help in anyway possible.

17           "I would truly appreciate a return call today at  
18 (954)668-8429. Evan, even if it's just to say "blank-off" and  
19 stop calling me, that would be more courteous than no call at  
20 all. As Tom Cruise said in Jerry McGuire, 'There is such a  
21 thing as manners.' Sounds so basic but yet with this comes  
22 balance. Al Geller."

23       Q     In response to Mr. Geller's e-mail he writes to  
24 Mr. Geller and Mr. Shkreli on May 16, 2013, "Al, no offense  
25 was intended I apologize for the delay returning your calls.

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1 We are preparing the other agreement we discussed. We will  
2 get out to you this week."

3 Mr. Shkreli then responds to Mr. Greebel, on May 16,  
4 2013, what does he state?

5 A "He is high maintenance."

6 Q If we scroll up, Mr. Greebel from the prior page responds  
7 to Mr. Shkreli on May 16 at 8:55 a.m. he writes, "Yup. Any  
8 thoughts how you want to handle his and his brother's  
9 requests?"

10 In response Mr. Shkreli writes to Mr. Greebel on  
11 May 16, 2013, 8:55 a.m., "Ignore."

12 We can go now to tab 50, Government's Exhibit 307,  
13 this is an e-mail exchange dated May 31, 2013 between  
14 Mr. Shkreli and Mr. Greebel with the initial e-mail a carbon  
15 copy to Schuyler Marshall. The first e-mail is from  
16 Mr. Shkreli at the bottom of the page on May 31 to Mr. Greebel  
17 with a carbon copy to Schuyler Marshall, the title is  
18 settlement.

19 Special Agent, can you please read what Mr. Shkreli  
20 writes?

21 A "\$300,000 cash, \$300,000 stock, he has some amount of  
22 stock now, 37,809 or so, so we would issue 6300 shares of  
23 stock and wire \$300,000 in cash."

24 Q In response Mr. Greebel forwards this e-mail to  
25 Mr. Shkreli. He writes, "Is this a similar settlement issue?"

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1 And in response, what does Mr. Shkreli write to him?

2 A "Yes."

3 Q Look at Government's Exhibit 309, tab 52 of your binder.  
4 This is a multi-page e-mail between Mr. Greebel and  
5 Mr. Shkreli. The last e-mail dated July 11, 2013. It starts  
6 with an e-mail on the second page from David Geller. If we  
7 can go to the second page and look at Mr. Geller's first  
8 e-mail he writes to Mr. Greebel with the title settlement  
9 agreement and states, "Evan, as per Martin's instructions I  
10 will be contacting you with all correspondence going forward.  
11 I have retained counsel to start legal action. As I stated  
12 before, I will be contacting the SEC and certain media  
13 outlets. This has nothing to do with my brother. I have  
14 received broken deals and broken promises over the last few  
15 months. Furthermore, no good faith has been shown concerning  
16 settlement. I'm giving you until Monday evening to make good  
17 on our agreement. After that I will start my actions. I wish  
18 it didn't come to this, but I see no other way."

19 Mr. Greebel forwards that e-mail to Mr. Shkreli on  
20 July 11, 2013 at 8:58 a.m. and he writes, "FYI clearly his SEC  
21 threat concerns me given the other issue. What do you want me  
22 to tell him?"

23 In response Mr. Shkreli writes to Mr. Greebel on  
24 July 11, 2013 at 9:34 a.m. Can you please read his response,  
25 Agent Braconi?

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1 A "Just tell him that we've had a delay in financing and  
2 can't pay him until the financing. That is scheduled for  
3 August 1st. We have to repeat a mouse experiment which  
4 failed. We are working hard on a new transaction with  
5 Novartis. If he wishes to do what he wants to do, he will  
6 receive no settlement funds ever, and has no case. He should  
7 just wait until we raise our funds. I would also offer a  
8 modest sweetener of \$400,000 and a little extra stock for his  
9 patience."

10 Q Mr. Greebel then writes to Mr. Shkreli in response on  
11 July 11, 2013 at 9:36 a.m. He states, "Okay, he was owed 300,  
12 I will offer the additional amount. How do you want me to  
13 handle Lavelle since the first payment is due next week?"

14 In response Mr. Shkreli writes to Mr. Greebel on the  
15 same day at 9:40 a.m., what does he state?

16 A "Make sure you talk David Geller down from the ledge,  
17 somewhat important."

18 Q In response Mr. Greebel writes to Mr. Shkreli at  
19 1:40 p.m. on that day, "I already e-mailed him to speak."

20 If we go to tab 53, Government's Exhibit 311, Agent  
21 Braconi, is the bottom of this e-mail chain separate from the  
22 last e-mail, is that a continuation the same e-mail chain we  
23 saw from the previous exhibit?

24 A Yes.

25 Q If we look at the very top of this e-mail chain, it's



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1 from Mr. Greebel to Mr. Shkreli dated July 11, 2013, at  
2 1:46 p.m., which is approximately, it appears to be six  
3 minutes after Mr. Greebel's prior response in Government's  
4 Exhibit 309 about "I already e-mailed him to speak."  
5 Mr. Greebel writes, "He's off the ledge. He said he will  
6 consider how many more shares he wants. We agreed to discuss  
7 the additional amount after you guys announce the news of the  
8 various things. I told him I will reach back to him in August  
9 after the news is announced. He confirmed that he's not going  
10 to pursue anything at this point."

11 That is signed by Evan Greebel; is that correct?

12 A Correct.

13 Q Let's turn to tab 54, Government's Exhibit 315, this is  
14 an e-mail change between Mr. Shkreli and Mr. Greebel. It  
15 originates with e-mails regarding Darren Blanton or with  
16 Darren Blanton. The last e-mail is dated August 15, 2013 at  
17 5:06 p.m. Start with the first email chronologically in this  
18 chain, on page two.

19 A "Hi guys. Darren and I have agreed that I will give him  
20 100,000 shares of my stock. Please effect this transaction  
21 and send him documents ASAP. Darren as you know, has been  
22 waiting extremely patiently to resolve this matter and we are  
23 letting him down. There will be further discussion on  
24 resolution but this immediate transfer should begin this  
25 process. Thanks, Martin."

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1 Q So the record is clear, it's an e-mail from Mr. Shkreli  
2 to Darren Blanton with a CC to MichaelRosensaft@KattenLaw.com  
3 and Evan Greebel with a title, transfer to Darren Blanton; is  
4 that correct?

5 A Correct.

6 Q In response Mr. Blanton writes to Mr. Shkreli five days  
7 later August 15, 2013. He writes, "Is there anything we need  
8 to be doing? Are we still moving forward with this? Thanks,  
9 Darren."

10 If we go to the first page of this document, look at  
11 Mr. Shkreli's response at the bottom dated April 15, 2013, at  
12 8:30 a.m. to Mr. Blanton with a carbon copy to Michael  
13 Rosensaft and Mr. Greebel, what does he write there?

14 A "Yes. My lawyers are lazy and stupid and paid too much.  
15 I send them important e-mails and they don't respond."

16 Q If we scroll up in this chain, Mr. Greebel then writes  
17 only to Mr. Shkreli on August 15, 2013, at 9:08 a.m., with a  
18 change of subject as "DB." He writes, "Is DB getting the same  
19 thing? Also I assume we want a release from him."

20 In response Mr. Shkreli writes to Mr. Greebel with a  
21 carbon copy to Michael Rosensaft, and what does he write  
22 there?

23 A "Yes. Also we want him to talk to the SEC..."

24 Q In response Mr. Greebel writes to Mr. Shkreli only,  
25 "Attached is a draft of the DB agreement. Please confirm that

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1 it is acceptable to be sent to him."

2 In response Mr. Shkreli writes to Mr. Greebel on  
3 August 15, 2013 at 5:06 p.m. What does he write?

4 A "Yup, that's fine."

5 Q Tab 55, Government's Exhibit 316, this is an e-mail  
6 exchange between Mr. Shkreli, Marc Panoff and Evan Greebel.  
7 If we look at the first e-mail in this chain it's from Marc  
8 Panoff -- and who is Marc Panoff, again, in his signature  
9 block?

10 A The Chief Financial Officer for Retrophin Inc.

11 Q On August 15, 2013, at 2:22 p.m. he writes to Mr. Shkreli  
12 with a carbon copy to Evan Greebel with the title 10Q.  
13 Mr. Panoff writes Martin, "The 10Q is delayed due to the  
14 settlement issues. We need to work through the issue with  
15 Marcum before we file. We have been waiting for the financing  
16 to close before we resolving this issue."

17 If you can please scroll up to Mr. Shkreli's  
18 response, sent on August 15, 2013 at 6:24 p.m. to Mr. Panoff  
19 with a carbon copy to Mr. Greebel. Can you read his response?

20 A "Fix the fucking issue. There is no issue. How many  
21 times do we have to talk about this?"

22 Q That response is in all capital letters; is that correct?

23 A That's correct.

24 Q Turning to tab 56, Government's Exhibit 318, this is  
25 e-mail exchange between Mr. Greebel and Mr. Shkreli, last

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1 e-mail being August 21, 2013 at 2:21 p.m. We'll start with  
2 the first e-mail chronologically in the chain from Schuyler  
3 Marshall on August 12, 2013 at 8:53 a.m. to Mr. Greebel and  
4 Mr. Shkreli with no title. Mr. Marshall writes, "Are we now  
5 in a position to finalize the agreement we made in my IRA MSMB  
6 investment? Schuyler."

7 He forwards that e-mail on August 21, 2013 at  
8 10:20 a.m. to Mr. Greebel and Mr. Shkreli and writes, "In  
9 light of your successful pipe placement on August 16 of  
10 25 million may we now consummate our settlement agreement?  
11 Schuyler."

12 Mr. Greebel then writes in response to Mr. Shkreli  
13 on August 21, 2013, at 2:21 p.m. What does he write there?

14 A "How do you want me to handle given the new approach?"

15 Q If we turn to tab 57, Government's Exhibit 320, this is  
16 an e-mail exchange including Schuyler Marshall, a follow on  
17 from the prior exhibit we looked at. We can start in the  
18 middle of the first page. Mr. Marshall's e-mail is dated  
19 August 23, 2013, to Mr. Shkreli at 1:32 p.m. He writes here,  
20 "Looking forward to your call," with his phone number. "There  
21 should not be much to discuss, although I'm interested in RTRX  
22 progress. We settled per your e-mail of 5/31 and documented  
23 by Evan in the release 6/17. You also said you would remove  
24 the legend from the stock. If you wire the 300K to my account  
25 at Morgan Stanley I will FedEx you the signed release and

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1 trust you to issue you the additional 6,300 shares and remove  
2 the legend from both certificates as soon as practical. Does  
3 this work for you? Schuyler."

4 Martin Shkreli forwards this e-mail on August 23,  
5 2013, at 1:58 p.m. to Mr. Greebel.

6 Can you please read his e-mail?

7 A "Let's work out a resolution ASAP. I've been doing  
8 financial statement analysis for 15 years and I really don't  
9 think the Marcum view makes any sense. Please get this  
10 settled ASAP. I'm promising these guys we will have a  
11 definitive solution by Monday. Be creative."

12 Q In response Mr. Greebel writes on August 23, 2013 at 6:08  
13 p.m. to Mr. Shkreli, "We may have a solution using notes which  
14 we are exploring."

15 Directing your attention Government's Exhibit 322,  
16 tab 58 of the binder. This is another e-mail exchange between  
17 Mr. Greebel and Mr. Shkreli. The last e-mail is dated  
18 August 23, 2013. If we go to the page ending in 351, if you  
19 look at the bottom of that e-mail, does that appear to be the  
20 same e-mail chain that we saw in Government's Exhibit 320?

21 A Yes.

22 Q Mr. Greebel on August 23, 2013, writes to Mr. Shkreli,  
23 "We talked to another accountant that is a GAAP expert who  
24 confirmed the subsequent event restatement issue that Marcum  
25 identified. We are trying to speak to BDO. This is a pure

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1 GAAP issue and legal analysis is not determinative."

2 If we scroll up in this chain, Mr. Shkreli responds  
3 to Mr. Greebel on August 23, 2013, what does he write?

4 A "Can you show me an example of a public company that has  
5 settled a lawsuit and restated all their prior financials.  
6 The if you're right, this should be very easy, very easy to  
7 pull up. But I've never seen, despite having meticulously  
8 following SEC filings over a decade for thousands of  
9 companies."

10 Q We go to Mr. Greebel's response at the bottom of the  
11 prior page on 350. Mr. Greebel writes to Mr. Shkreli, "The  
12 issue is the aggregate amount is material against your cash  
13 and balance sheet. We just spoke to our partner at BDO, they  
14 confirmed that Marcum is correct. We described the facts and  
15 they had the same analysis outcome. The note structure may  
16 work, and Marc is thinking about it."

17 In response Mr. Shkreli writes to Mr. Greebel. Can  
18 you please read his e-mail?

19 A "Even at this stage, where we have \$25 million? Sure  
20 it's not material now."

21 Q If we scroll up Mr. Greebel writes to Mr. Shkreli, "The  
22 test was at the time you signed, not now. I made that  
23 argument also."

24 In response what does Mr. Shkreli write to  
25 Mr. Greebel?

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1 A "We can annul the old agreements and then and replace."

2 Q Mr. Greebel responds to Mr. Shkreli on August 23, 2013.

3 He writes "No, they were already paid and Marcum had a problem  
4 with that. The indemnification agreements and notes covered  
5 that."

6 Further up on the page Mr. Shkreli from the prior  
7 page responds to Mr. Greebel on August 23, 2013 at 3:21 p.m.  
8 What does he write there, Agent Braconi?

9 A "I'm talking about things like Geller can be annulled on  
10 the settlement, can be deemed to take place today, August 23,  
11 2013 with Geller."

12 (Continued on next page.)

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1 DIRECT EXAMINATION (CONTINUED)

2 BY MS. KASULIS:

3 Q If we go to the prior page, ending in 349, if we can look  
4 at the bottom e-mail from Mr. Greebel to Mr. Shkreli dated  
5 August 23 at 3:23 p.m. He writes, Markum didn't like that  
6 idea.

7 If we scroll up in the chain, Mr. Shkreli responds  
8 to Mr. Greebel on the same day, and what does he write?

9 A There were serious faults with the agreement, including  
10 lack of board approval. So perhaps a second go isn't the  
11 worst idea.

12 Q If we go farther up in the chain, Mr. Greebel responds to  
13 Mr. Shkreli on August 23, 2013 and states, That will open up  
14 some very big issues. The current thinking is let RTRX pay,  
15 get a note from the fund, and if the fund can't fulfill the  
16 note, RTRX will write it off as a bad debt. It will be easier  
17 than the row you were referring to. Also, Markum would get  
18 very spooked with what you are talking about, which could  
19 spook your investors and counter parties.

20 And then, if we look further up in the chain,  
21 Mr. Shkreli responds to Mr. Greebel on August 23, 2013.

22 What does he write?

23 A On current thinking, that works for me.

24 Q Then the rest of this e-mail chain between Mr. Greebel  
25 and Mr. Shkreli is redacted; is that correct?



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1 A Correct.

2 Q If we turn to tab 60, Government Exhibit 325, this is an  
3 e-mail exchange between Evan Greebel and Martin Shkreli, dated  
4 September 4, 2013, with the title, Blanton consulting  
5 agreement.

6 If we can look at the e-mail from Mr. Shkreli to  
7 Mr. Greebel, with a carbon copy to -- oh, excuse me, from  
8 Mr. Shkreli to Mr. Greebel, and Darren Blanton, what does  
9 Mr. Shkreli write?

10 A Hi, Evan, can you send Darren the consulting agreement  
11 for Retrophin. Thanks.

12 Q In response, Mr. Greebel writes to Mr. Shkreli only on  
13 September 4, 2013, What are the terms?

14 In response, Mr. Shkreli --

15 MS. KASULIS: If you could just scroll up, please.

16 Q In response, Mr. Shkreli writes to Mr. Greebel on that  
17 day.

18 What does he state?

19 A Similar to -- give me a draft first.

20 Q In response, what does Mr. -- excuse me.

21 In response, Mr. Greebel writes to Mr. Shkreli on  
22 September 4, 2013, at 4:45 p.m., Okay.

23 I'm going to direct you to tab 62, Government  
24 Exhibit 330. This is an e-mail exchange between Mr. Greebel,  
25 Mr. Shkreli, and Mr. Panoff, dated October 1st, 2013. The

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1 original -- sorry -- chronologically the first e-mail from  
2 Mr. Greebel is on October 1st, 2013 at 9:08 a.m. to  
3 Mr. Shkreli and Mr. Panoff with the title, Form of consulting  
4 agreement non-science services. Mr. Greebel writes, As  
5 discussed, attached is a form of consulting agreement. This  
6 may be used for consultant providing non-science services as  
7 it does not include a noncompete. It should be personalized  
8 for the potential consultant, including shares and dollars to  
9 be paid, prior to sending to them.

10 In response, if we could go to Mr. Shkreli's  
11 response, he writes to both Mr. Greebel and Mr. Panoff on the  
12 same day, October 1st, 2013.

13 What does he write?

14 A This is a lousy consulting agreement that applies to a  
15 settlement where shares are being offered. I need a  
16 consulting agreement for someone who is going to get paid  
17 cash. Jesus Christ.

18 Q And in response, Mr. Greebel writes back to Mr. Shkreli  
19 and Mr. Panoff stating, Please see attached. It contemplates  
20 an hourly or quarterly payment, and you would indicate which  
21 is appropriate and delete the nonappropriate section; and I  
22 removed the payment of shares and related reps and the  
23 release.

24 If we look at tab 63, Government Exhibit 332, this  
25 is another e-mail exchange between Mr. Greebel and Mr. Shkreli

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1 on October 16, 2013. If we start with the first e-mail on the  
2 second page, first e-mail chronologically, Mr. Greebel writes,  
3 One of Blanton's guys just called me and said they do not want  
4 an option from you. Rather he wants 100,000 shares of stock.  
5 While he would prefer registered stock, he will accept  
6 unregistered stock. He also does not want to enter into a  
7 consulting agreement.

8 In response, Mr. Shkreli writes to Mr. Greebel on  
9 October 16, 2013.

10 What does he write there?

11 A Fine with me. We can't give him registered stock,  
12 obviously.

13 Q In response to Mr. Shkreli's e-mail, on October 16 at  
14 4:33 p.m., Mr. Greebel writes, Where will the 100K come from?  
15 If it's from the company, it would need to be in a consulting  
16 agreement.

17 If we go to the first page and look at Mr. Shkreli's  
18 response to Mr. Greebel at the bottom of the page, it's dated  
19 October 16, 2013 at 4:35 p.m.

20 What does Mr. Shkreli write there?

21 A Why would it need to be a consulting agreement? Have you  
22 heard of the term settlement? More business to other firms.

23 Q If we scroll up in this chain, Mr. Greebel responds on  
24 October 16, 2013 at 4:39 p.m. and states, we can call it a  
25 settlement agreement but given Markum's recent behavior they

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1 may require it to be disclosed in the financials. I was  
2 trying to prevent that issue.

3 If you scroll up in this chain, Mr. Shkreli responds  
4 to Mr. Greebel on October 16, 2013, at 4:41 p.m.

5 What does he write?

6 A Maybe we won't have Markum. Doesn't matter even if it is  
7 disclosed. It is preferable that it is not, but the way you  
8 idiotically characterize it as it has to be is erraneous  
9 (phonetic).

10 Q Erroneous?

11 A Erroneous.

12 Q If we can scroll up, Mr. Greebel responds to Mr. Shkreli  
13 at 8:44 p.m. on that date, October 16, 2013, and states, Okay.  
14 If you are comfortable disclosing it, we can do it as a  
15 settlement agreement. I will prepare the document. Do you  
16 want me to ask for a release?

17 Let's now turn to tab 66, Government Exhibit 338.  
18 This is an e-mail exchange between December 30, and  
19 December 31, 2013 between Mr. Greebel and Mr. Shkreli, titled  
20 Schuyler Marshall. If we look at Mr. Greebel's initial e-mail  
21 on December 30, 2013, to Mr. Shkreli, he writes, We just spoke  
22 to Schuyler and resolved his delegending issue. He mentioned  
23 that you and he discussed that he would receive 15,000  
24 additional shares. Was that meant to come from you or should  
25 we do a consulting agreement for him?

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1 In response, Mr. Shkreli, writes at 10:35 a.m. on  
2 December 31, 2013. What does he write?

3 A Ask him if he will tolerate a consulting agreement.

4 Q In response, Mr. Greebel writes, at 4:37 p.m. that day,  
5 Okay.

6 Let's turn to Government Exhibit 343. That's tab 67  
7 of your binder. It's an e-mail exchange dated March 17, 2014  
8 between Mr. Greebel and Mr. Shkreli. If we start at the very  
9 bottom of the page, the first e-mail chronologically is from  
10 Mr. Greebel to Mr. Shkreli on March 17, 2014 at 5:42 p.m.,  
11 with the title, Blanton.

12 If we look at the next page, Mr. Greebel writes, Do  
13 you want to raise the consulting agreement during your  
14 business update? It would be good to get board sign-off on  
15 it.

16 If we go to the prior page and look at Mr. Shkreli's  
17 response on that same day at 5:42p.m. to Mr. Greebel, what  
18 does Mr. Shkreli write?

19 A No, another time. This board meeting going too long.

20 Q In response to that e-mail, Mr. Greebel writes to  
21 Mr. Shkreli at 5:44 p.m., two minutes later, and states, Okay.  
22 That was why I asked. Should we delay Perlstein, Maccabim,  
23 and Pierotti also? There is a board meeting on Thursday to go  
24 over the K.

25 In response, Mr. Shkreli writes four minutes later,

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1 at 5:48 p.m., to Mr. Greebel; and what does Mr. Shkreli write?

2 A Yeah, let's delay. I don't want to pollute their  
3 thinking on this very big subject.

4 Q Mr. Greebel then responds to Mr. Shkreli at one minute  
5 later, at 5:49 p.m. and writes, I agree.

6 Let's turn to tab 68 of your binder, Government  
7 Exhibit 217. This is an e-mail exchange between Mr. Greebel  
8 and Mr. Shkreli, with the last e-mail in the chain dated  
9 November 1st, 2012 at 11:13 p.m. It's a multipage e-mail.  
10 I'm going to direct your attention to the page ending in 491,  
11 the middle e-mail here, from Mr. Greebel to Mr. Shkreli on  
12 October 31, 2012 at 8:32 p.m., with the title PPM.

13 Mr. Greebel writes, The timing question on Valeant,  
14 when will that deal close? Can we refer you -- can we refer  
15 to you as a commercial stage company? DGTE issue is how many  
16 shares slash warrants will investor receive at X dollars.

17 In response, Mr. Shkreli writes to Mr. Greebel on  
18 October 31, 2012, and what does he write?

19 A Need the price of DGTE to be \$5, and then it should be  
20 easy.

21 Q Mr. Greebel responds, referring to the prior page, on  
22 October 31, 2012 at 9:30 p.m. He writes -- if we can go to  
23 the next page, with Mr. Greebel's response, the next page at  
24 the top -- What does \$5 get someone?

25 If we then go to the prior page, Mr. Shkreli's

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1 response to Mr. Greebel on the same day, October 31, 2012,  
2 what does he write?

3 A Less shares out, better optics, slash, comfort from  
4 investors. There will not be 500 million shares out.

5 Q Mr. Greebel then responds to Mr. Shkreli on October 31,  
6 2012 at 9:33 p.m., and he writes, Sure, but I need to know the  
7 number of shares they get and also the number of shares  
8 Retrophin forward splits into.

9 In response, Mr. Shkreli writes to Mr. Greebel on  
10 November 1st, 2012 at 7:06 p.m. What does he write?

11 A Five dollars per share price. 106,595 common shares  
12 outstanding. DGTE needs to issue us 8 million shares, unless  
13 the convert note can be given out to Retrophin -- to a  
14 Retrophin investor or multiple Retrophin investors. This  
15 would be good.

16 Q In response, Mr. Greebel writes to Mr. Shkreli on that  
17 same day at 7:08 p.m. He writes, If they are giving Retrophin  
18 stockholders 8 million shares, eight-to-one exchange, it means  
19 you are also issuing 8 million shares in the pipe. Total  
20 outstanding will be 16 million. The convert note can be  
21 bought by whomever. That is separate than the issue above.  
22 The challenge is the ability to trade the stock underlying the  
23 note. At \$5 a share the buyer is getting quite a deal.

24 Mr. Shkreli then responds. It's the first page of  
25 this document. At the bottom of the page, Mr. Shkreli writes

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1 to Mr. Greebel on November 1, 2012 at 7:09 p.m.

2 Can you please read what he wrote there?

3 A Exactly. 16 million. On topic two, if the note can be  
4 given to current shareholders they can get that in lieu of the  
5 share exchange to 5.5 million in the share exchange and no  
6 divided up into 2.5 million shares for some of the other  
7 investors.

8 Q In response, Mr. Greebel writes to Mr. Shkreli on  
9 November 1st, 2012 at 7:11 p.m. He writes, That is more  
10 challenging. In response, Mr. Shkreli writes to Mr. Greebel  
11 in the same minute, on November 1st, 2011 -- sorry,  
12 November 1st, 2012.

13 What does he write?

14 A Well, the shares have to go to someone.

15 Q And in response, Evan Greebel writes at 11:13 p.m. on  
16 that date, Issue. Note slash shares currently held by  
17 nonaffiliate of DGTE. In merger Retrophin SHS get newly  
18 issued shares from the company and company acquires Retrophin.  
19 No way to get the stock from nonaffiliate to Retrophin  
20 stockholders without a one-to-one stock purchase agreement.

21 If we go to tab 69, Government Exhibit 220, it's a  
22 multipage e-mail between Mr. Shkreli and Mr. Greebel dated  
23 November 22, 2012. If we start with the e-mail on the first  
24 page from Mr. Shkreli at 1:43 p.m.

25 A DGTE a bust.



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1 Q Sorry. I should just make sure the jury can see it. All  
2 right. Go ahead.

3 A DGTE or bust. I have very little time for Valeant before  
4 Valeant sues us.

5 Q Sues me?

6 A Sues me. Sorry.

7 Q This e-mail was sent to Brian O'Connor at  
8 Boconnor@cannacordgenuity.com and Evan Greebel with a cc to  
9 Eugene Robelman at Erobelman@cannacordgenuity.com; is that  
10 correct?

11 A Correct.

12 Q If we go up in e-mail chain, Mr. Greebel writes to  
13 Mr. Shkreli only on November 22, 2012, at 3:28 p.m. He  
14 writes, I will talk to him. I also do not believe he is being  
15 difficult. Is there any reason other than the 2.5 million  
16 that you want this shell? A new, quote, clean shell will  
17 definitely be cheaper, but we never gave a deposit for DGTE  
18 and I've told you I have some capitalization concerns. He was  
19 sending Brian and me e-mails at 1:30 a.m. He is working to  
20 get this done.

21 In response, Mr. Shkreli writes to Mr. Greebel on  
22 November 22, 2012 at 9:16 p.m. What does he write there?

23 A The 2.5 million help a lot.

24 Q Let's go to tab 70, Government Exhibit 227. This is a  
25 one-page e-mail from Mr. Greebel to Mr. Shkreli dated

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1 December 5, 2012 at 8:27 p.m. Mr. Greebel writes, Per your  
2 instructions -- sorry -- Per your prior instructions, Kevin is  
3 not an employee or consultant of Retrophin.

4 Did I read that correctly?

5 A Yes.

6 Q Let's go to tab 72, Government Exhibit 230. This is an  
7 e-mail exchange between Mr. Greebel and Mr. Shkreli dated  
8 December 11, 2012. Let's start with the first e-mail  
9 chronologically. This is an e-mail from Mr. Greebel to  
10 Mr. Shkreli on December 11, 2012 at 5:27 p.m. with the title,  
11 Fearnow purchase.

12 Mr. Greebel writes, I'm listing everyone's address  
13 as care of MSMB. Does that work for you?

14 Mr. Shkreli then responds to this e-mail at  
15 6:03 p.m. In his response to Mr. Greebel, what does he write?

16 A No.

17 Q In response, Mr. Greebel then writes to Mr. Shkreli at  
18 11:03 p.m. on December 11, 2012, Then what do you prefer?

19 If we go to tab 73 of this binder, Government  
20 Exhibit 232, this is an e-mail from Mr. Greebel to Mr. Shkreli  
21 dated December 12, 2012 at 10:17 p.m. Mr. Greebel writes, I  
22 got the signed purchase agreements.

23 Did I read that e-mail correctly?

24 A Yes.

25 Q Let's go to tab 74, Government Exhibit 233. This is an

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1 e-mail exchange between Mr. Shkreli and Mr. Greebel dated  
2 December 13, 2012. The first e-mail is from Mr. Greebel to  
3 Mr. Shkreli with no title. On December 13, 2012 at 1:31 p.m.  
4 Mr. Greebel writes, Kevin P. Mulleady, 400,000. Thomas E.  
5 Fernandez, 400,000. Marek Lucjan Biestek, 350,000. Timothy  
6 J. Pierotti, 400,000. Claridge Capital LLC, 400,000. Andrew  
7 R. Vaino, 300,000. And Edmund J. Sullivan, 150,000.

8 Mr. Shkreli then responds to Mr. Greebel  
9 approximately two minutes later at 1:33 p.m.; and what does he  
10 write?

11 A He writes, Kevin P. Mulleady, 350,000. Thomas E.  
12 Fernandez, 350,000. Marek Lucjan Biestek, 300,000. Timothy  
13 J. Pierotti, 350,000. Claridge Capital LLC, 350,000. Andrew  
14 R. Vaino, 250,000. Edmund J. Sullivan, 100,000.

15 Q Let's turn to tab 75. It's Government Exhibit 235. This  
16 is an e-mail exchange between Mr. Shkreli, Mr. Greebel, and  
17 Jackson Su dated December 13, 2012. The first e-mail at the  
18 bottom of the first page is from Mr. Su to Mr. Greebel and  
19 Mr. Shkreli with a carbon copy to Corey Massella on  
20 December 13, 2012 at 12:03 a.m. with the title, Entity.

21 Mr. Su writes, What is the name of the entities that  
22 we are paying 200K for the shell? Corey needs to know.

23 In response, Mr. Shkreli writes to Mr. Su and  
24 Mr. Greebel at 11:07 a.m. on the same date.

25 What does he write there?

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1 A Can someone get me how much shares Brent Saunders owns  
2 and how many total outstanding shares are in the company?  
3 This is urgent as Brent wants to buy some more stock for a  
4 good amount of cash. Best, Martin.

5 Q In response, Mr. Greebel writes to Mr. Shkreli and Mr. Su  
6 one minute later, at 11:08 a.m., and he writes, Buy from the  
7 company or market?

8 And then, in response, Mr. Shkreli writes to  
9 Mr. Greebel and Mr. Su at 4:10 p.m. on the same day. What  
10 does he write?

11 A From Fearnow holders.

12 Q If we can turn to tab 76, Government Exhibit 236. This  
13 is a one-page e-mail exchange dated December 13, 2012. The  
14 first e-mail is from Mr. Greebel to Marek Biestek and Edmund  
15 Sullivan on December 13, 2012 at 5:57 p.m.

16 Mr. Greebel writes, Please send me an e-mail  
17 confirming the following. I represent that I am not an  
18 officer, a director, or holder of ten percent or more of the  
19 outstanding equity securities of Desert Gateway and do not  
20 belong or together with any other person, exercise, control  
21 over Desert Gateway. I'm not an affiliate, as such term is  
22 defined in the Securities Act of 1933, of Desert Gateway. I  
23 am in no position to issue or propose to issue any security  
24 relating to the Desert Gateway.

25 Marek, please ask each of the other investors to

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1 send the same e-mail to me. If it is easier, please print it  
2 out and have them sign it; and that's signed Evan Greebel.

3 In response -- excuse me -- Mr. Greebel then  
4 forwards this e-mail to Mr. Shkreli at 10:58 p.m. on the same  
5 day; and he writes, FYI to deal with his latest request.

6 Did I read that properly?

7 A Yes.

8 Q Let's turn to tab 77, Government Exhibit 364. This is an  
9 e-mail that is a continuation of the original e-mail as the  
10 same e-mail we saw in the prior government exhibit from  
11 Mr. Greebel to Mr. Biestek and Mr. Sullivan on December 13,  
12 2012 at 5:57 p.m.; is that correct?

13 A Correct.

14 Q Marek Biestek then writes at 11:10 p.m. on that day to  
15 Mr. Greebel and Mr. Sullivan. What does he write?

16 A I confirm this statement as being accurate in regards to  
17 myself, Marek Biestek.

18 Q Let's turn to tab 78, Government Exhibit 365. This is a  
19 single e-mail from Mr. Vaino, Andrew Vaino, dated December 14,  
20 2012 at 2:10 p.m. He writes this e-mail to Evan Greebel with  
21 the title Desert Gateway.

22 Can you please read this e-mail for the jury.

23 A Evan, I represent that I am not an officer, a director,  
24 or a holder of ten percent or more of the outstanding equity  
25 securities of Desert Gateway and do not, alone or together

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1 with any other person, exercise control over Desert Gateway.  
2 I am not an affiliate, as such term is defined in the  
3 Securities Act of 1933, of Desert Gateway. I am in no  
4 position to issue or propose to issue any security relating to  
5 the Desert Gateway.

6 (Continued on the next page.)  
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1 DIRECT EXAMINATION (CONTINUED)

2 BY MS. KASULIS:

3 Q Thank you. We can go to Tab 79. It's  
4 Government's Exhibit 357.

5 This is single e-mail from Marek Biestek to Evan  
6 Greebel dated December 14, 2012 at 1:24 p.m., with the title  
7 Scottrade supporting documentation request.

8 Can please read this e-mail for the jury.

9 A Evan, could you draft some sort of supporting letter  
10 each of us could provide to Scottrade to ease the deposit of  
11 certificates. We want to avoid any delays when they ask us  
12 how we obtained this stuff, and arm them with as much  
13 supporting documentation as we can. We will e-mail them  
14 copy of the Fearnow note and anything else we can give  
15 them a headsup today to prevent any delays on Monday.  
16 Thanks Marek.

17 Q Let's turn to Tab 80, Government Exhibit 366.

18 This is an e-mail dated -- the last e-mail dated  
19 December 14th, 2012. If we look at the bottom of this page,  
20 does this appear to be the same e-mail from Mr. Greebel to  
21 Mr. Biestek and Mr. Sullivan dated December 13, 2012 that we  
22 have seen in the previous e-mails that we have reviewed?

23 A Yes.

24 Q If we then scroll up in this chain, Mr. Biestek appears  
25 to forward this e-mail on December 14, 2012, at 9:09:00 a.m.

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1 to Mr. Vaino, Mr. Tim Pierotti, Kevin Mulleady, Tom  
2 Fernandez, and Ron Tilles; is that correct?

3 A Correct.

4 Q Then Tom Fernandez appears to send an e-mail to  
5 Mr. Biestek, Evan -- and Evan Greebel on December 14th, 2012  
6 at 2:29 p.m.

7 What does he write in this e-mail?

8 A I confirm the statement below. Tom Fernandez.

9 Q If we turn to Tab 81, Government Exhibit 367 --

10 MS. KASULIS: Your Honor, it may be a good time to  
11 break after this e-mail?

12 THE COURT: All right.

13 BY MS. KASULIS:

14 Q So if we can look at Government Exhibit 367 from  
15 Mr. Kevin Mulleady to Mr. Greebel on December 14th, 2012 at  
16 2:36p.m. p.m.

17 What does Mr. Mulleady write there?

18 A I represent that I am not an officer, a director, or  
19 holder of 10 percent or more of the outstanding equity  
20 shares of Desert Gateway and do not alone or together with  
21 any other person exercise control over Desert Gateway. I am  
22 not an affiliate, as such term is defined in the Security  
23 Act of 1933 of Desert Gateway. I am in no position to issue  
24 or propose to issue any security relating to Desert Gateway.  
25 Kevin Mulleady.



Proceedings

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1 MS. KASULIS: Thank you, Agent Braconi.

2 THE COURT: All right. Why don't we now take a  
3 lunch break. The jurors are asked if you would please  
4 return to the jury room at around 1:35. Thank you for your  
5 attention.

6 Please do not talk about the case.

7 (Jury exits.)

8 (The following matters occurred outside the  
9 presence of the jury.)

10 THE COURT: All right. Let's take about an hour.  
11 Is there anything that we need to address right  
12 now?

13 MS. KASULIS: No, Your Honor.

14 MR. BRAFMAN: No.

15 THE COURT: All right. Thank you.

16 (Lunch recess taken at 12:26 p.m.)

17 (Continued on next page.)

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1           A F T E R N O O N   S E S S I O N

2           (In open court; outside the presence of the jury.)

3           THE COURT: All right. So are the parties ready to  
4 continue?

5           MS. KASULIS: Yes, Your Honor.

6           (Pause in proceedings.)

7           (Jury enters.)

8           (Jury present.)

9           THE COURT: All jurors are present. Please have a  
10 seat, everybody.

11           Ms. Kasulis, if you would like to resume your  
12 examination of Special Agent Braconi, you may do so.

13           MS. KASULIS: Thank you, Your Honor.

14 DIRECT EXAMINATION (CONTINUED)

15 BY MS. KASULIS:

16 Q    Good afternoon, Agent Braconi.

17 A    Good afternoon.

18 Q    Let's go to Tab 82 of your binder. It's  
19 Government Exhibit 372. This is a multipage e-mail between  
20 Mr. Shkreli and Mr. Greebel and some additional individuals.  
21 The last e-mail in the chain chronologically is dated  
22 December 14th, 2012, at 4:18 p.m.

23           If I can direct your attention to the page ending  
24 in 691. And if we could just focus on that bottom e-mail  
25 from an individual named Greg Jacqueline. It's dated

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1 December 13, 2012, to Mr. Greebel with some carbon copies to  
2 three individuals including Martin@MSMBCapital.com.

3 Mr. Jacqueline writes, Evan attached is an initial  
4 draft of the opinion for your review. Am still reviewing,  
5 but I felt this was close enough to your review. The  
6 highlighted area reflects what I need from the shareholders  
7 to issue the opinion.

8 There are then a series of e-mails back and forth.

9 And then if we go to the first page of this  
10 exhibit, ending in Bates Number 689, if we can look at  
11 Mr. Greebel's e-mail there. He writes on December 14th,  
12 2012, at 10:09 a.m., to Mr. Jacqueline and then cc's a  
13 number of individuals, including Mr. Shkreli. Can you  
14 please read this e-mail?

15 A Page 4, last paragraph, he acquired the note four years  
16 prior to conversion. You can also include the language  
17 about the purchasers, the stock not being affiliates, et  
18 cetera, if you want.

19 Q And when then it goes on to state?

20 A Oh, sorry. Otherwise it's good-bye me and can be sent.

21 Q Let's turn to Tab 83. It's Government Exhibit 242.

22 This is an e-mail from Mr. Shkreli. It's to  
23 firm-wide is the list at the end, sent on December 17th,  
24 2012, at 12:52 p.m. with carbon copies to Tom Fernandez,  
25 Kevin Mulleady@googlemail.com, Marek Biestek, Ron

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1 Tilles@gmail.com, Tim Pierotti and Andrew Vaino with the  
2 title Retrophin.

3 Can you please read this e-mail from Mr. Shkreli  
4 to the jury?

5 A Effective immediately I am the CEO of Retrophin, Inc.  
6 MSMB Capital is, as you know, liquidating its hedge funds  
7 and this process should be complete shortly. Retrophin has  
8 four employees, myself, Leonora Izerne, Jackson Su, and  
9 Michael Smith. If you're not on this list you're not an  
10 employee or consultant to Retrophin and no longer an  
11 employee or consultant to Retrophin if you were previously.  
12 The same applies to MSMB Capital.

13 You may use this 777 Third Avenue office as a  
14 courtesy, but must detach yourself to another corporate  
15 identity, for instance, Marek Biestek, Wentworth, or Ron  
16 Tilles, Claridge. You must not use MSMB Capital or  
17 Retrophin e-mail accounts other than for a brief courtesy  
18 period.

19 Finally, to my knowledge, no one other than the  
20 four direct employees mentioned and our Board of Directors  
21 has material nonpublic information regarding Retrophin. If  
22 you choose to use the 777 Third Avenue office, please  
23 refrain from asking me about developments regarding  
24 Retrophin. Any such inquiries will end up with a no comment  
25 myself and any Retrophin employee.

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1           It was a pressure working with you on Retrophin  
2 and MSMB Capital. I wish you all the best in your future  
3 endeavors.

4           Martin Shkreli.

5       Q     Let's turn the Tab 84. It's Government Exhibit 368.

6           This is an e-mail exchange from December 16th,  
7 2012, to December 17th, 2012, between Mr. Shkreli and  
8 Mr. Mulleady. If we can start with the first e-mail  
9 chronologically dated December 16th, 2012, at 6:59 p.m.

10          It's on the next page of the exhibit.

11          From Mr. Shkreli to Mr. Mulleady, can you please  
12 read this e-mail to the jury?

13       A     I would get a replacement server e-mail. Perhaps MKM  
14 or something like this. Another easy solution is Ron's  
15 Claridge Capital. Anyway, I'm editing the website. I still  
16 have this to do. Change page name about us to management,  
17 delete duplicate copy, add a page investor's which will  
18 include a link to a PDF PowerPoint, contact information for  
19 investors and possibly a stock quote. No idea if this easy  
20 or free to obtain. Delete most recent press release in two  
21 places, home and news.

22          Under management move Aselage to Board of  
23 Directors. I will give a new bio for Martin Shkreli.

24       Q     And if we look on the bottom of the first page on  
25 December 17th, 2012, at 6:31 a.m. Kevin@stonecornergroup.com

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1 wrote, hi, sorry I missed your call. I was in bed early  
2 last night. I set up this e-mail. Do you think I should  
3 stay home until FedEx comes or at least I talk with them  
4 again?

5 And if we scroll down a little bit. Just all the  
6 way down just to confirm at the bottom of the e-mail that's  
7 from Kevin Mulleady; is that right?

8 A That's correct.

9 Q And then if we go to the e-mail that Mr. Shkreli sends  
10 in response on December 17th, 2012, at 6:37 a.m., what does  
11 he write there?

12 A I would call FedEx and track the package. Don't stay  
13 home.

14 Q And if we scroll up further, Kevin Mulleady at  
15 Kevin@stonecornergroup.com responds to Mr. Shkreli on  
16 December 17th, 2012, at 8:03 a.m. and the title of the  
17 e-mail is -- looks like it's a response for to title  
18 Retrophin Website.

19 And Mr. Mulleady writes, okay, I'll be in a little  
20 late, not feeling well. Kevin Mulleady, with a mobile  
21 number.

22 And then if we scroll further up to Mr. Shkreli's  
23 response, on December 12th, 2012, at the same time,  
24 8:03 a.m., what does he write there?

25 A No get in on time. WTF. Need you here.

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4941

1 Q Let's turn the Tab 85. It's Government Exhibit 245.

2 This is an e-mail chain originating with Standard  
3 Registrar and then e-mail exchanges between Mr. Shkreli and  
4 Mr. Greebel with the last e-mail being dated December 28th,  
5 2012, at 9:57 p.m. December 28, 2012, at 9:57 p.m. If we  
6 can start with the first e-mail chronologically in this  
7 chain at the bottom from Standard Registrar  
8 Amy@standardregistrar.com on December 28th, 2012 at  
9 1:45 p.m. to Mr. Greebel with the title Totals. She writes,  
10 thank you, and then signed Amy of Standard Registrar &  
11 Transfer Company, Inc.

12 And if we scroll up in this chain, Mr. Greebel  
13 forwards this e-mail to Mr. Shkreli at 4:04 p.m. on the same  
14 date and states, FYI:

15 Please scroll further up in the chain, please.

16 Mr. Shkreli responds to Mr. Greebel at 3:08 p.m.  
17 and what does he state there?

18 A Amazing someone shorted 60,000 in the last two days.

19 Q Mr. Greebel responds to Mr. Shkreli on the same day at  
20 4:10 p.m. by stating, How will they cover?

21 In response Mr. Shkreli write writes to  
22 Mr. Greebel on the same day at 9:57 p.m., and what does he  
23 write there?

24 A I think it might be Tim selling.

25 Q Let's go to Tab 86, Government Exhibit 246.

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1           This is a one-page e-mail between Martin Shkreli  
2 and Evan Greebel. If we start -- and dated December 29th,  
3 2012, at the last e-mail in the chain. If we start at the  
4 bottom in e-mail dated December 28th, 2012, at 5:00 p.m.  
5 from Mr. Shkreli. Can you please read what he wrote there?

6 A     Hey Tim, Merry Christmas. I'm going to be in your neck  
7 of the woods tomorrow and have some time to pop down if you  
8 have a minute.

9 Q     Mr. Pierotti, Tim Pierotti, responds to Mr. Shkreli on  
10 December 28th, 2012, at 7:52 p.m. with title Tomorrow. And  
11 he states, If you need to communicate something to me, talk  
12 to Eric. He and I speak regularly. Timothy Pierotti.

13           If we scroll further up in this chain it appears  
14 that Mr. Shkreli forwards this e-mail chain on the same  
15 day -- well, December 28th, 2012, it looks like there may be  
16 some issues with the time zone change at 7:01 p.m. to  
17 Mr. Greebel and then further up in the chain, Mr. Greebel  
18 responds to Mr. Shkreli on December 2012 at 1:03 a.m.

19           What does Mr. Greebel write here?

20 A     Leave it alone. You are an affiliate and will only  
21 create problems.

22 Q     Let's turn to Tab 87, Government Exhibit 248.

23           This is an e-mail exchange between Mr. Greebel and  
24 Mr. Shkreli dated from December 29th, 2012 through  
25 December 30th, 2012. If we can start on the second page of



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1 this document. This is an e-mail from Mr. Shkreli to  
2 Mr. Greebel dated December 29th, 2012, at 8:41 p.m. with the  
3 title Over the Wall and Confidential. Retrophin RTX raising  
4 1 mill -- 1 million in a convertible note followed by 10  
5 million plus in a pipe. Comments requested.

6 And there are a list of recipients there,  
7 including Tim Pierotti, Marek Biestek, Kevin Mulleady,  
8 Andrew Vaino, Ron Tilles, Tim Pierotti with two different  
9 e-mail addresses, Marek Biestek and the Kevin Mulleady  
10 e-mail address at Google mail, and then the  
11 Kevin@stonecornergroup.com. Do you see that there?

12 A Yes.

13 Q And then it appears to be an e-mail that Mr. Shkreli  
14 had drafted entitled Investors. And then he explained in  
15 this e-mail sort of the current state of Retrophin; is that  
16 correct?

17 A That's correct.

18 Q Can you please read the bottom last paragraph of this  
19 e-mail?

20 A Please review the note and provide commentary on -- to  
21 me ASAP, ideally before Monday, to I can begin marketing it.

22 Also please indicate if you'll be participating.  
23 If you have sold your foundry shares in the open market, may  
24 I remind you that this is a good time to display your  
25 loyalty to the company with your reinvested proceeds.

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1 Martin.

2 Q And if you scroll up on this page it's an e-mail  
3 response and just I'll represent from the prior page it's  
4 from Mr. Greebel to Mr. Shkreli on December 29th, 2012, at  
5 9:11 p.m. And Mr. Greebel writes -- says, I like it,  
6 although I do not like the subject line. I placed at the  
7 end of the e-mail. Also, query whether you want to send it  
8 to all/identified who you are sending it to. Lastly I do  
9 not like the use of the word dire. Prefer you say RTRX is  
10 undertaking the next step in order to raise funds for 13  
11 R&D.

12 If you go to the prior page, Mr. Shkreli then  
13 writes Mr. Greebel on December 30th, 2012 at 9:32 a.m. and  
14 what does he write there?

15 A What's wrong with the subject line?

16 Q In response Mr. Greebel writes at 11:38 a.m. on the  
17 same day, He will not open it once he sees it.

18 And if you scroll up to Mr. Shkreli's response, at  
19 the same time at 11:38 a.m. to Mr. Greebel what does he  
20 write there?

21 A The subject line is Enough to Put Everyone OTW.

22 Q And then if you look the subject line of this e-mail it  
23 states, Over the Wall; is that correct?

24 A That's correct.

25 Q And if we scroll up in this chain in the last e-mail

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1 Mr. Greebel writes to Mr. Shkreli on December 30th, 2012, at  
2 4:40 p.m., Interesting idea. I don't know what happens if  
3 he deletes and doesn't read.

4 Let's turn to Tab 88, Government Exhibit 249.  
5 This is an e-mail exchange between Mr. Greebel and  
6 Mr. Shkreli with the last e-mail in the chain dated  
7 December 31st, 2012. If I can direct your attention to the  
8 page ending in 758 and start with the e-mail closest to the  
9 top from Mr. Greebel dated December 28th, 2012, at  
10 11:18 a.m.

11 Mr. Greebel writes Mr. Shkreli with the title  
12 Heskett, someone has 30K or so, why? No one is freely  
13 trading stock, though.

14 In response, again from the prior page,  
15 Mr. Shkreli writes an e-mail to Mr. Greebel in response with  
16 the same date, at the same time 11:18 a.m.

17 And what does Mr. Shkreli write there?

18 A This stock is trading like crazy. Someone is selling  
19 the shit out of it.

20 Q If we go to the next -- the prior page. Do you see  
21 Mr. Greebel's response to Mr. Shkreli's e-mail. It's at  
22 11:26 a.m. on the same date Mr. Greebel writes, I don't  
23 know. There is no freely trading stock other than you guys  
24 and the 500K that Fearnow has.

25 If you scroll up in this chain, Mr. Shkreli writes

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1 to Mr. Greebel approximately one minute later and what does  
2 he write?

3 A He writes huh?

4 Q In response Mr. Greebel writes to Mr. Shkreli one  
5 minute later stating, I'm confirming with transfer agent  
6 that there is no other freely-trading stock.

7 And Mr. Shkreli writes to Mr. Greebel on the same  
8 day at 4:21 p.m. and what does he write there?

9 A Let's chat when you get a second (646) 217-2783.

10 Q And then in response Mr. Greebel writes to Mr. Shkreli  
11 on the same day at 5:40 p.m. and he writes, I called you. I  
12 seriously need money on Monday. This is a real problem for  
13 me. Please confirm that you are sending the 100 plus that  
14 we discussed. I sent you the note and warrant you asked  
15 for.

16 And if you go to the prior page to continue this  
17 e-mail change. At the bottom Mr. Shkreli e-mails  
18 Mr. Greebel on the same date at 5:00 p.m. and what does he  
19 write there?

20 A 0 chance for Monday, maybe Wednesday, but Monday is  
21 tough.

22 Q And if you scroll up. Mr. Greebel writes Mr. Shkreli  
23 at 6:59 on the same day, Do you want to speak? And then in  
24 response Mr. Shkreli writes, on the same day, again it looks  
25 like that may be a time zone issue, it says 6:27 p.m., what

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1 does Mr. Shkreli write?

2 A I have to get my thoughts together regarding Tim.

3 Q And if you scroll up to Mr. Greebel's response on  
4 December 28th, 2012, at 7:32 p.m. he writes, Not sure what  
5 you can do. He has the stock. Please make wed a reality  
6 for the wire. I'm out of time. When we discussed two weeks  
7 ago, you assured me that you would get me a hundred plus by  
8 year end. Last week you reiterated that and promised it  
9 since you got to money from Ron's guy.

10 What happened on the other thing?

11 And in response?

12 A Still no news on the other thing. I'm doing to my best  
13 the get the funds.

14 Q And that's dated December 28th, 2012, at 6:33:00 p.m.?

15 A Correct.

16 Q I'm directing you to Tab 89, it's  
17 Government Exhibit 251. This is an e-mail exchange between  
18 Mr. Shkreli and Mr. Greebel dated January 2nd, 2013. The  
19 first e-mail in the chain is from Mr. Shkreli dated  
20 January 2nd, 2013, at 9:26 a.m. to Mr. Greebel titled  
21 Litigation (message to be sent to Tim Pierotti), let me know  
22 what you think. Can you please read Mr. Shkreli's e-mail?

23 A Hi Tim, I have decided to commence litigation against  
24 you for failing to honor the agreement we made in our office  
25 or December 10th. You agreed to work for MSMB growing and

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1 managing investments and engaging with me on new  
2 opportunities. Instead you have failed to come to the  
3 office and will not even return my telephone calls. This is  
4 classic cut bait fraud. You cannot agree to do something  
5 with someone for a financial benefit, take the financial  
6 benefit and not perform the service.

7 I am going to notify your brokers of this pending  
8 litigation and request they freeze your account and all  
9 transfers associated. I am writing this action up in the  
10 Southern District of New York. Alternatively you can sign  
11 this agreement, which I believe you will find to be an  
12 effective settlement. I will let you keep the funds you  
13 have received and will also give you \$40,000 to end this  
14 unfortunate situation for both of us.

15 I am sorry our business relationship could not  
16 continue further and I wish you the best.

17 If you have any questions please let me know.  
18 Martin Shkreli.

19 Q And if we can scroll up to Mr. Greebel's response to  
20 Mr. Shkreli on the same day at 9:52 a.m.

21 He writes, Very risky given what your agreement  
22 was. Could be opening a much bigger can of worms.

23 And in response what does Mr. Shkreli write at  
24 9:54 a.m. on the same date?

25 A Call when you get a chance.

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4949

1 Q Let's turn to Tab 90, Government Exhibit 369. This is  
2 an e-mail originally from Mr. Shkreli to a group of  
3 individuals and then Mr. Mulleady responds to the group of  
4 individuals on January 2nd, 2013. If we look at the e-mail  
5 at the bottom of the page, it's the first e-mail in the  
6 chain from Mr. Shkreli dated December 30th, 2012.

7 If we could just look at the very bottom.

8 And then this is -- it's -- the title is Over the  
9 Wall Retrophin Marketing Type. And then this is the e-mail  
10 that Mr. Shkreli writes; is that correct?

11 A Correct.

12 Q And if we look at the next page, Mr. Shkreli then sends  
13 this e-mail on December 30th, 2012, at 4:14 p.m. with the  
14 same title. He sends it to Tim Pierotti, Marek Biestek,  
15 appears to be an address for Tom Fernandez, Kevin Mulleady,  
16 Ron Tilles and Andrew Vaino. He writes, I still have not  
17 received any responses. Please help as this is an urgent  
18 and important matter. If Retrophin doesn't raise 1 million  
19 in the near future I think you know what the results will  
20 be. And that's on December 30th, 2012; is that correct?

21 A That's correct.

22 Q And if we go to the last e-mail in this chain at the  
23 top of the page it's from Kevin@stonecornergroup.com on  
24 January 2nd at 7:52 p.m. to the same group of individuals,  
25 including Mr. Shkreli. What does Mr. Mulleady write there?

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1 A Hello gentlemen, I trust everyone had a happy New Year.  
2 Best of luck to all for 2013. Unfortunately, I will not be  
3 able to invest in the convertible note and/or pipe at this  
4 moment. My personal equity is tight. I have not sold  
5 any shares RTRX and, in fact, have been buying up until  
6 receipt of Martin's previous e-mail. However, I would like  
7 to mention the stock has fallen recently on high volume and  
8 anyone that can sell is on this e-mail. So I would implore  
9 investors that have taken advantage of the recent liquidity  
10 to reconfirm their commitment to the long-term success of  
11 Retrophin. If the financing is completed at a low  
12 valuation, I am sure we are all aware of the dilution of the  
13 current shareholders will be substantial. Furthermore, if  
14 the stock price goes much lower, the result may completely  
15 crippling.

16 Thank you, Kevin Mulleady.

17 Q And does he have a PS there?

18 A Yes. Please note my new e-mail address.

19 Q And let's turn to Tab 91, it's Government Exhibit 255.

20 This is an e-mail exchange between Mr. Greebel and  
21 Mr. Shkreli with the last e-mail dated February 13th, 2013.

22 If we can go to the second to last page of this  
23 document Bates Number 812 at the end.

24 The first e-mail is from Mr. Greebel to  
25 Mr. Shkreli dated February 12th, 2013, at 2:19 p.m. the



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1 title is Pierotti. Mr. Greebel writes, Tim left me a  
2 message. Instead he will sell 250,000 shares for 150K.  
3 Offer is good until Friday. What do you want do?

4 In response Mr. Shkreli writes to Mr. Greebel  
5 at -- on February 13th, 2013, at 7:15 a.m. and what does he  
6 write?

7 A Okay, I accept. Let's finish this.

8 Q In response on the same day at 9:05 a.m. Mr. Greebel  
9 writes, Do you want to lockup, if so for how long and how  
10 many share?

11 If we go to the next e-mail in the chain and I can  
12 represent that from the prior page that it's sent from  
13 Martin Shkreli to Evan Greebel on the same day at 9:08 a.m.

14 What does Mr. Shkreli write?

15 A No lockup is fine, but he will not be able to buy his  
16 escrowed shares. He releases any ability to continue to  
17 execute his contract with this e-mail. The 350,000 is all  
18 he got and all he will ever get. This leaves him with  
19 100,000 gross of anyone he's sold already.

20 Q And if we go to the next e-mail in this chain on the  
21 prior page from Mr. Greebel to Mr. Shkreli, at 9:11 a.m. on  
22 the same date, he writes, Okay. I'm not sure how to stop  
23 the subsequent Fearnow stock unless you have someone else  
24 get it.

25 And in response Mr. Shkreli writes at 9:12 a.m. on

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4952

1 the same day, and what does he write?

2 A Well, he signed a purchase agreement for 400,000, so he  
3 is acknowledging that that agreement is no longer valid.

4 And will he -- and all he will get is this 350,000.

5 Q Further up in the chain Mr. Greebel writes to  
6 Mr. Shkreli same day 9:14 a.m., Understood but he signed it  
7 with Fearnow. Designate a new purchaser and I'll have him  
8 sign his rights.

9 In response to that e-mail at 9:16 a.m., two  
10 minutes later, what does Mr. Shkreli write to Mr. Greebel?

11 A Need is fine.

12 Q And then if we go to the first page of this document,  
13 the bottom which the next e-mail in this chain, Mr. Greebel  
14 writes to Mr. Shkreli on February 13th, 2013, at 9:18 a.m.,  
15 Not the best course of action. You are the director and CEO  
16 of a public company. You now have a duty of loyalty and  
17 related issues. Getting stock below market could be  
18 problematic.

19 In response Mr. Shkreli writes to Mr. Greebel on  
20 February 13th, 2013, at 9:19 a.m. and what does he write?

21 A F that.

22 Q And if you scroll further up in the e-mail chain,  
23 Mr. Greebel writes to Mr. Shkreli at 9:10 -- 9:20 a.m. on  
24 same date, This is a very big deal.

25 In response Mr. Shkreli writes to Mr. Greebel at

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4953

1 9:22 a.m. on the same day, and what does he write?

2 A We can talk about it, but as an executive I am free to  
3 buy stock and if I know a selling shareholder selling it  
4 cheap, that should be fine for me.

5 Q And in response Mr. Greebel writes to Mr. Shkreli at  
6 2:22 p.m. on February 13th, 2013, Let's discuss.

7 Let's now turn to Tab 92 of your binder. It's  
8 government Exhibit 370. This is a lengthy e-mail chain  
9 between Mr. Greebel and Mr. Shkreli and a couple of other  
10 individuals. Let's just go to the first page, the last  
11 e-mail of the chain is February 27th, 2013.

12 Mr. -- Special Agent Braconi, in your review of  
13 the e-mail prior to this first page, does this appear to be  
14 an e-mail exchange about an individual getting Retrophin  
15 free-trading shares?

16 A Yes.

17 Q And if we could go to the e-mail in the middle of the  
18 first page of this document, from Evan Greebel it's dated  
19 February 27th, 2013, at 1:42 p.m., to Mr. Shkreli with the  
20 title, Tom Koestler and Mr. Greebel writes, We discussed  
21 this at Ranger game. Do you want to give him some of the  
22 Fearnow stock or new restricted grant from company or combo?

23 And Mr. Shkreli responds to Mr. Greebel on the  
24 same day at 1:44 p.m. and what does he write there?

25 A Combo would be great.

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1 Q And then in response Mr. Greebel writes to Mr. Shkreli  
2 on February 27th, 2013, at 6:44 p.m., Okay with me. BD  
3 needs to approve any grant. Let me know the numbers.

4 If we turn in Tab 93, Government Exhibit 268.  
5 This is a multipage e-mail between Evan Greebel and Martin  
6 Shkreli with the last e-mail dated March 8th, 2013.

7 If I could direct your attention to the page  
8 ending in 916. And we can start with the first e-mail in  
9 the chain from Mr. Greebel to Mr. Shkreli dated March 7th,  
10 2013, at 2:40 p.m. and it's titled 10K/Audit. Mr. Greebel  
11 writes, should Corey interface with Ron or someone else  
12 about the info for the audit?

13 In response Mr. Shkreli writes four minutes later  
14 at 2:44 p.m. to Mr. Greebel, and what does he state?

15 A Ron, you should really liaise with someone else here on  
16 these kinds of things. Marek, Ron, Tom, Mike, anyone but  
17 me.

18 Q If you go to the next e-mail in the chain, at the  
19 bottom of the prior page. Mr. Greebel writes in response on  
20 the same date at 2:47 p.m., Okay. I'm not waiting for  
21 Heskett anymore and I will draft the assignment myself.  
22 Other than the stock to Lindsey and Sarah H, who do you want  
23 the shares going to and will you let the individuals keep  
24 the stock?

25 And if you scroll up in the chain, Mr. Shkreli

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1 writes to Mr. Greebel two minutes later at 2:49 p.m. on the  
2 same date. And what does he write there?

3 A I think the process is as follows: One, get as many  
4 people to forego their holdings if possible. Make sure that  
5 we can still deem who they will eventually go to, e.g., make  
6 sure that as soon as Andrew or whoever agrees to forego the  
7 50,000 shares that doesn't mean that Fearnow now permanently  
8 own them but instead we can assign them as we wish,  
9 including subsequently over time, et cetera.

10 2, transfer from Fearnow to LARSH immediately.

11 3, over time transfer to others, if necessary.

12 4, after a period of time transfer the rest to me.

13 That's the plan.

14 Q And in response Mr. Greebel writes to Mr. Shkreli  
15 approximately four minutes later, he writes, The plan works.  
16 My concern is that we will be releasing the money from  
17 escrow, i.e., what protection and he could screw the  
18 back-end people. I have an alternative idea but want to  
19 walk you through it, as it was complicated. Have you talked  
20 with all about foregoing or do you need me to speak to them?

21 In response Mr. Shkreli writes to Mr. Greebel at  
22 3:37 p.m. On the prior page he starts with, Most people are  
23 okay with it.

24 And then if we go -- there's the beginning of  
25 Mr. Shkreli's response and then if we go back to the top of

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1 the next page he writes, and if you could read this piece,  
2 Agent Braconi?

3 A I don't care how you protect me on the Fearnow thing,  
4 just make sure that after they agree to give up their  
5 escrowed stock despite there being now [sic] escrow  
6 agreement that we can still access the Fearnow stock.

7 Q And if we go to the prior page to Mr. Greebel's  
8 response to Mr. Shkreli, if we go to -- thank you.

9 It's on March 7, 2013, at 3:38 p.m. Mr. Greebel  
10 writes, I have a solution but needs to be discussed.

11 In response Mr. Shkreli writes to Mr. Greebel on  
12 the same day, at 3:55 p.m., and what does he write?

13 A Call Marek.

14 Q And if you scroll up in this chain, Mr. Greebel then  
15 responds one minute later at 3:56 p.m. and writes, Let me  
16 know when you are available. This call is for you.

17 In response Mr. Shkreli writes, at 3:57 p.m. and  
18 what does he write?

19 A Not available by phone ever. Sorry.

20 Q If we go to prior page, the next e-mail in this  
21 exchange, Mr. Greebel responds to Mr. Shkreli at 3:59 p.m.  
22 on the same day and states, This involves privilege, which I  
23 do not have with Marek on this point.

24 Mr. Shkreli responds to Mr. Greebel at 4:12 p.m.  
25 on the same day and what does he write?

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1 A Okay. I guess we're stuck, then. New counsel will be  
2 able to handle from here. Thanks anyway.

3 Q In response Mr. Greebel writes two minutes later at  
4 4:14 p.m., This is being done to protect you and not have  
5 the problem that we had before. I need somebody you trust  
6 that is not already in the mix. This way we can have the  
7 stock there and not have Fearnow risk.

8 In response Mr. Shkreli writes on the same day at  
9 8:08 p.m., and what does he write there?

10 A I guess Fearnow gets 400,000 free shares. God bless  
11 America. Good job, Evan.

12 Q Now, I'm directing you to Tab 94 of your binder,  
13 Government Exhibit 271. This is an e-mail chain between  
14 Mr. Greebel and Mr. Shkreli with the last e-mail dated  
15 March 8th, 2013. If we go to last page of this exhibit  
16 ending in Bates Number 230, this e-mail chain starts with  
17 Mr. Greebel dated March 8th, 2013, at 2:39 p.m. to  
18 Mr. Shkreli with the title Fearnow Breakdown.

19 He then writes under the sources section TF stock  
20 100K, 50K to TS, and 50K to MS; MB stock 50K, 50K to LR; RT  
21 stock 50K, 25K to TK, and 25K to MS; AD stock 50K, 50K to  
22 TK; ES stock 50K, 30K to LR, and 20K to SH.

23 And then under the usage section, Mr. Greebel  
24 writes, LR gets 80 shares (from MB and ES). He will return  
25 24,046 restrictive shares to MSMB.

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1 TK gets 75K shares (from AZ and RT).

2 MS gets 75K shares (from TF and RT). Will become  
3 restricted upon receipt.

4 TF gets 50K shares (from TS) and FH gets 20K  
5 shares (from ES)?

6 Please confirm that is acceptable and I will  
7 circulate.

8 In response to this e-mail Mr. Shkreli writes to  
9 Mr. Greebel at 3:52 p.m. on the same day.

10 And what does he state?

11 A That looks good but are you having these done directly?  
12 That wouldn't seem to make sense, since technically Fearnow  
13 owns them. How are you intending to have these done?

14 Q In response on the prior page Mr. Greebel writes to  
15 Mr. Shkreli on the same day at 4:06 p.m. and he writes  
16 choice Fearnow and the, quote, purchasers are signing an  
17 amendment to their purchase agreement and in the amendment  
18 the, quote, purchaser is directing Troy to have his stock  
19 delivered to the designated people.

20 In response Mr. Shkreli writes on the same day  
21 approximately six minutes later at 4:12 p.m. and what does  
22 he write there?

23 A I don't know if that will fly. Why do we have to  
24 designate the people? It would be better if Marek's stock  
25 went to me and Tom's went to LAR and similar with Ron.



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1 Q In response Mr. Greebel writes at 4:19 p.m. on the same  
2 day 7 minutes later and he states, I can have it go to the  
3 people but if the people do to the deliver you -- do not  
4 deliver you will have a very angry LAR, SH and TK trying to  
5 prevent that. Also any stock you get becomes disclosable  
6 and more difficult to transfer.

7 And if you scroll up in the chain Mr. Shkreli  
8 writes in response to Mr. Greebel at 5:18 p.m., and what  
9 does he write there?

10 A We should probably figure this out. When you say go to  
11 the people, what do you mean? You are not being very clear.  
12 When Marek signed the doc giving up the stock, does he have  
13 to stipulate where it goes -- where it's going.

14 Q And then Mr. Greebel's response starts at the bottom  
15 prior page. That's on -- the same day March 8th, 2013, at  
16 5:22 p.m. and he writes, The amendment between Marek, et  
17 cetera, and Fearnow, will provide where the stock goes  
18 (i.e., LAR, SH, TK or you) pursuant to the breakdown below  
19 (i.e., each person's agreement will designate one or two  
20 recipients). Each of the individuals will know where it  
21 goes as will Fearnow.

22 The alternative is to let it go to the individuals  
23 and then they transfer it to LAR, SH and TK. We will have  
24 no way to ensure that they transfer i.e., a Pierotti  
25 problem.

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1 I was trying to protect you from a hostage  
2 situation.

3 And let's turn now to Tab 96. Actually let's  
4 turn to Tab 97. It's Government Exhibit 275. This is an  
5 e-mail exchange between Mr. Shkreli and Mr. Greebel dated  
6 March 11th, 2013. We can start with the first e-mail in the  
7 exchange. It's from Mr. Shkreli to Mr. Greebel dated  
8 March 11th, 2013 at 3:07 p.m. with the title Wire.

9 Can you please read this e-mail for the jury.

10 A Wired you 100,000. I expect you and Howard to bury  
11 Tim.

12 Q And if you go to the response to this e-mail from  
13 Mr. Greebel to Mr. Shkreli on the same day approximately  
14 four minutes later 3:11 p.m., Mr. Greebel writes, Send the  
15 docs/correspondence when you can, please. I sent Marek the  
16 Fearnow docs.

17 And in response Mr. Shkreli writes on the same day  
18 at 7:13 p.m. and what does he write?

19 A Great.

20 Q I would like you to turn to Exhibit [sic] 99. It's  
21 Government Exhibit 355 -- I'm sorry, 335. This is an e-mail  
22 that's been forwarded from Mr. Shkreli to Mr. Greebel dated  
23 December 16, 2013. If we start with the first e-mail, it's  
24 from Michael Fearnow at MFearnow@gopublic.com dated  
25 December 16th, 2013, at 6:50 p.m. to Mr. Shkreli with a CC

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1 to John Heskett with no title.

2 And Mr. Fearnow writes, Tim is asking for his  
3 stock please call.

4 Mike.

5 And in response what does Mr. -- or what does  
6 Mr. Shkreli do with this e-mail, Agent Braconi?

7 A He forwarded it to Evan Greebel.

8 Q And that's at 11:51 p.m.?

9 A Correct.

10 Q And I'm directing you to Tab 100,  
11 Government Exhibit 336. This is an e-mail exchange between  
12 Martin Shkreli and Evan Greebel with last e-mail being  
13 December 17th, 2013, at 2:40 a.m. If we go to the second  
14 page of this document, if we at look at the e-mail from  
15 Mr. Greebel to Mr. Shkreli, and that's dated December 16th,  
16 2013, at 1:34 p.m. with the title Fearnow Stock. And does  
17 it appear there that there are a number of individuals  
18 listed with different allocations of stock to those various  
19 individuals?

20 A Yes.

21 (Continued on next page.)

22

23

24

25

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1 DIRECT EXAMINATION (CONTINUED)

2 BY MS. KASULIS:

3 Q And at the very bottom Mr. Greebel writes, "As a result  
4 Andy, Ed, Marek and Kevin are not entitled to anymore stock;"  
5 is that correct?

6 A Correct.

7 Q In response Mr. Shkreli writes, that's on December 16 at  
8 9:27 p.m., can you please read his response?

9 A "Okay. Did I file Form four on the 2,872 shares from  
10 Andrew? If not, please prepare. What I'd like to do with the  
11 rest is the following.

12 "There are 150,000 assignable shares left. The rest  
13 50,000 to Tim, we don't really control. It looks like we're  
14 given away 150,000, 200,000 if you count Kevin. So I'd like  
15 to split those 150,000 shares this way. Tom, 75,000; Marek  
16 37,500; Ron 37,500. This would be a bit more equitable.  
17 Whoever has shares in their name I suppose that would be Tom  
18 and Ron would be equally given to Marek to true him up to  
19 37,500. Then, and this is the complicated step, I would buy  
20 all 150,000 shares in three separate purchase agreements.  
21 This would be on a forward concept. I'd take possession  
22 today, pay them at close, or at a later date as per the  
23 purchase agreement details.

24 "The only detail is I have three years to pay them.  
25 If I don't pay them after three years I have to either return

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1 the shares or give them cash or they have remedy. The sooner  
2 you can do this the better. Ideally, would like to file an  
3 updated Form 4 on this acquisition of 150,000 shares this week  
4 if possible. Next week would be okay too. What is going on  
5 with Jackson and George? I want that stock too. Make sure  
6 they can't take it out of the transfer agent."

7 Q That last sentence, "make sure they can't take it out of  
8 the transfer agent," for the record, that's a bolded sentence?

9 A Correct.

10 Q This e-mail is dated December 16, 2013?

11 A Yes.

12 Q Then I'm directing you to tab 101, Government's Exhibit  
13 351. This is an e-mail from Christine Giordano with the  
14 e-mail address at the top, Christine@Retrophin.com dated  
15 January 10, 2014, to David Kravitz with a carbon copy to Evan  
16 Greebel with the title, "Retrophin Inc. Director and officer  
17 questionnaire, FINRA questionnaire, lock-up agreement,  
18 signature page." In that e-mail Ms. Giordano writes, "Hi  
19 again" -- with a smiley face -- "Please note attached. Thank  
20 you, Christine." Then there appears to be an attachment to  
21 this document; is that correct?

22 A Correct.

23 Q Before we get there let's just look at the e-mail that  
24 initiates this chain Bates number 821. It's from Mr. Kravitz  
25 on December 31, 2013 at 4:54 p.m. to Mr. Shkreli, looks like

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1 an e-mail from Mr. Aselage, Steve Richardson and some other  
2 individuals including Marc Panoff and Horacio Plotkin with a  
3 CC to Christine Giordano and Evan Greebel. Can you read that  
4 first sentence of Mr. Kravitz's e-mail?

5 A "In connection with Retrophin Inc.'s contemplated public  
6 offering of its common stock, attached for your review and  
7 completion are our director and officer questionnaire and  
8 FINRA questionnaire."

9 Q If we scroll down a little bit, David Kravitz is an  
10 associate at Katten Muchin Rosenman LLP; is that correct?

11 A That's correct.

12 Q The date of this is December 31, 2013, this e-mail?

13 A Correct.

14 Q If we turn to the page ending in Bates number 823, does  
15 this appear to be the attachment to this e-mail chain, Agent  
16 Braconi?

17 A Yes.

18 Q At the top of the page, entitled Retrophin Inc. With the  
19 name Martin Shkreli in position CEO; is that correct?

20 A Yes.

21 Q It's entitled, "Questionnaire for directors and executive  
22 officers"?

23 A That's correct.

24 Q And the first paragraph of the questionnaire reads, "This  
25 questionnaire is being furnished to all directors and

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1 executive officers of Retrophin Inc., the Company. The  
2 purpose of the questionnaire is to obtain information required  
3 to be disclosed by the Company to the Securities & Exchange  
4 Commission, the SEC, in connection with the filing of the  
5 company's registration statement on Form S1 with respect to  
6 the underwritten offering of the common stock of the Company."

7 Then if I scroll down to the next paragraph, it  
8 reads, "The length and complexity of this questionnaire is the  
9 unfortunate result of the many rules and regulations of the  
10 SEC and the NASDAQ stock market LLC, NASDAQ, relating to the  
11 preparation of a publicly-traded company's disclosure  
12 documents."

13 If we then go to the page ending in 832 it appears  
14 this form is completed; is that right?

15 A That's correct.

16 Q If we look at the very top question 7.6.1, the question  
17 reads, "Have you been or are you presently the subject of any  
18 investigation by the SEC, the Commodity Futures Trading  
19 Commission, FINRA or any other regulatory or self-regulatory  
20 organization that could result in the finding of a violation  
21 of any federal or state securities or commodities laws?"

22 There is an "X" by the top option, what is that?

23 A "I am not the subject of any investigation regarding  
24 violations of any federal or state securities or commodities  
25 law."

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1 Q If we go to the page ending in 849, if we focus in the  
2 middle portion of that, under the "print name" section, who is  
3 listed there?

4 A Martin Shkreli.

5 Q Does that appear to be Mr. Shkreli's signature right  
6 above that?

7 A Yes.

8 Q The date on this document?

9 A January 10, 2014.

10 Q Agent Braconi, if we could just go to the next section of  
11 your binder, behind tab 86, it's not in evidence yet just  
12 marked for identification, it's Government's Exhibit 53. Do  
13 you recognize this document?

14 A Yes.

15 Q What is it?

16 A It's a e-mail from Spencer Spielberg -- from Evan Greebel  
17 to Spencer Spielberg, the subject is executed settlement  
18 agreement.

19 Q There is an attachment to this e-mail?

20 A Correct.

21 MS. KASULIS: The Government moves this exhibit into  
22 evidence, Exhibit 53.

23 MR. AGNIFILO: No objection.

24 THE COURT: We will receive Government's Exhibit 53.

25 (Government's Exhibit Number 53 so marked and



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1 received in evidence.)

2 BY MS. KASULIS:

3 Q This e-mail --

4 MR. AGNIFILO: One second, Judge.

5 THE COURT: Sure.

6 MR. AGNIFILO: Okay. We're fine. Sorry, Judge.

7 THE COURT: Okay. Thank you.

8 BY MS. KASULIS:

9 Q This is an e-mail from Mr. Greebel dated May 1st, 2013 to  
10 Spencer Spielberg with a blind carbon copy to himself,  
11 Mr. Greebel, with the title, "executed settlement agreement."  
12 And in the body of the e-mail Mr. Greebel writes, "Hi Spencer,  
13 attached is the executed settlement agreement," signed Evan.

14 If we go to the next page of this document, at the  
15 top paragraph, does this appear to be a settlement and release  
16 agreement entered into on April 30, 2013, by Spencer  
17 Spielberg, Martin Shkreli, MSMB Capital Management LP, MSMB  
18 Capital Management LLC, MSMB Healthcare LP, MSMB Healthcare  
19 Investors LLC, and MSMB Healthcare Management LLC, and  
20 collectively called MSMB Entities, and Retrophin Inc. Referred  
21 to as Retrophin; is that correct?

22 A Yes.

23 Q If we look at the bottom of this page, this section  
24 number one entitled "payment terms," can you please read up to  
25 the per share section of this, number one payment terms?

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1 A "Payment terms Retrophin paid \$25,000, the payment,  
2 via wire transfer of immediately available funds to the  
3 Releasor on or about March 14, 2013. And agrees to deliver or  
4 cause to be delivered by June 1st, 2013, to Releasor the total  
5 amount of 6,000 shares of common stock."

6 Q And the par value?

7 A "The par value of .0001 per share.

8 Q If you go to the second to last page of this document,  
9 Bates number 1196 -- actually, let's go back to page ending  
10 191. At the bottom of the page there is a section number  
11 five, release, does this release appear to release  
12 Mr. Shkreli, Retrophin and each MSMB entity from any  
13 liabilities?

14 A Yes.

15 Q Now if we go to the page ending in 196, on the left-hand  
16 side of this agreement, who appears to sign this agreement?

17 A Spencer Spielberg.

18 Q And on behalf of Mr. Shkreli individually, Retrophin,  
19 MSMB Capital both entities, MSMB Healthcare LP, and then on to  
20 the next, page two, additional MSMB Healthcare entities, who  
21 signs for Mr. Shkreli individual and the entities listed here?

22 A Martin Shkreli.

23 Q Now showing you what is marked for identification not in  
24 evidence, Government's Exhibit 56, behind tab 88 in your  
25 section Mr. Braconi -- Special Agent Braconi, I'm sorry. Do

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1 you recognize this exhibit?

2 A Yes.

3 Q What is it?

4 A It's a settlement and release agreement for Michael  
5 Lavelle.

6 MS. KASULIS: The Government moves Government's  
7 Exhibit 56 into evidence.

8 MR. AGNIFILO: Just a 30 second sidebar, Judge?

9 THE COURT: Yes.

10 (Continued on the next page.)

11 (Sidebar conference.)

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Sidebar conference

4970

1 MR. AGNIFILO: Just in terms of issue of  
2 preservation, when Your Honor makes a final ruling because we  
3 objected to both of these documents. When we don't object  
4 now, we're not waiving it now. We just don't need to object  
5 again. So we object because we objected before.

6 MS. KASULIS: Sure.

7 MR. AGNIFILO: Your Honor ruled; it's a final  
8 ruling.

9 THE COURT: Would you like me to the say admitted as  
10 discussed previously, or something like that?

11 MR. AGNIFILO: I guess so, that's fine.

12 MS. KASULIS: That's fine for the Government.

13 MR. AGNIFILO: That goes throughout. Once I  
14 interpreted Your Honor made a final decision, it's over. We  
15 raised the legal issue. Your Honor ruled. We move on. Thank  
16 you, Judge.

17 (End of sidebar conference.)

18 (Continued on the next page.)  
19  
20  
21  
22  
23  
24  
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1 (In open court.)

2 THE COURT: Can the jurors hang on for five more  
3 minutes before the break? Thank you.

4 MS. KASULIS: The Government moves 56 into evidence.

5 THE COURT: As discussed I will admit this exhibit.

6 (Government's Exhibit Number 56 so marked and  
7 received in evidence.)

8 BY MS. KASULIS:

9 Q Before we look at that exhibit, if I can show you the  
10 prior tab, Government's Exhibit 54, tab 87 of that section of  
11 your binder. Do you recognize this document, Agent Braconi?

12 A Yes.

13 Q What is it?

14 A An e-mail from Evan Greebel to David G. Trachtenberg.

15 Q What is the attachment called?

16 A Kocher settlement.

17 MS. KASULIS: The Government moves Exhibit 54 into  
18 evidence.

19 MR. AGNIFILO: No objection.

20 THE COURT: We will admit Government's 54.

21 (Government's Exhibit Number 54 so marked and  
22 received in evidence.)

23 BY MS. KASULIS:

24 Q If we can go back to Government's Exhibit 56, does this  
25 appear to be a settlement and release agreement entered into

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1 as of June with no specific day, 2013, by Michael Lavelle,  
2 Martin Shkreli, MSMB Capital Management LP, MSMB Capital  
3 Management LLC, MSMB Healthcare LP, MSMB Healthcare Investors  
4 LLC, MSMB Healthcare Management LLC, collectively known as the  
5 MSMB Entities, and Retrophin Inc. Known as Retrophin; is that  
6 correct?

7 A Correct.

8 Q If we look at section one at the bottom of this first  
9 page, can you please read that first section there?

10 A "Payment terms, the MSMB Entities or Retrophin  
11 individually or collectively the payor jointly and severally  
12 agree to deliver or cause to be delivered to the Releasor the  
13 total amount of \$1 million, 1,355,000 the cash payment, and  
14 5,000 shares of common stock par value .0001 per share."

15 Q Could you keep going?

16 A "The shares and collectively with the cash payment, the  
17 liquidation, amount of Retrophin as full and final  
18 satisfaction for any and all claims obligations, liabilities  
19 promises, agreements, controversies, damages, actions, causes  
20 of action, suits, judgments, rights, demands, losses, debts,  
21 contracts, commitments, or expenses of every kind and nature  
22 collectively claims."

23 Q And then if we go to the next page and then paragraph  
24 five, the very bottom, it has the same kind of release that  
25 we've seen in different iterations of this agreement; is that

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1 correct?

2 A Correct.

3 Q If we go to the last second to last page of this  
4 agreement ending in 43, who signs on the left-hand side of the  
5 page?

6 A Michael Lavelle.

7 Q For all the entities listed on the right side of the  
8 page, including Mr. Shkreli individually, Retrophin and all of  
9 the various MSMB Entities who signs?

10 A Martin Shkreli.

11 Q And then in terms of the payment terms, it was MSMB  
12 Entities or Retrophin who were to deliver the \$1.355 million  
13 in this agreement; is that correct?

14 A Correct.

15 Q If we look at Government's Exhibit 510-E, page 161, does  
16 this appear to be a summary chart regarding the Retrophin Inc.  
17 Bank account? If we can look at the very bottom of the page  
18 just to confirm, with the account number ending in 3600; is  
19 that correct?

20 A Correct.

21 Q This is the Retrophin Inc. Account, correct?

22 A Correct.

23 Q The first listing there October 2, 2013, how much is  
24 debited from this account?

25 A \$1,355,000.

Braconi - Cross - Agnifilo

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1 Q If we look all the way to the right side, where does this  
2 wire go, who is the recipient?

3 A Michael Lavelle.

4 Q The reference in the wire, what is that?

5 A Retrophin settlement.

6 MS. KASULIS: One moment, Your Honor.

7 No further questions.

8 THE COURT: All right. Thank you. I'll give the  
9 jurors the mid-afternoon break now. Please leave the  
10 notebooks on your chair, don't discuss the case. We'll  
11 retrieve you in about ten minutes thank you.

12 (Jury exits the courtroom.)

13 (Time Noted 3:55 p.m.)

14 THE COURT: We'll take about ten minutes.

15 (Whereupon, the witness resumes the stand.)

16 (Jury enters.)

17 (Jury present.)

18 THE COURT: The jurors are present. Have a seat  
19 everybody.

20 Mr. Agnifilo, you may commence the  
21 cross-examination.

22 CROSS EXAMINATION

23 BY MR. AGNIFILO:

24 Q Good afternoon, Special Agent Braconi.

25 A Good afternoon.



Braconi - Cross - Agnifilo

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1 Q Other than sort of making small talk around the  
2 courthouse, you and I have never officially spoken regarding  
3 the case, correct?

4 A No.

5 Q I'm going to authorize your partner if I get close to  
6 5:30 to throw something at me to end today.

7 A Okay.

8 Q So I want to start with what has been admitted into  
9 evidence at Government's Exhibit 218, you can get it from your  
10 book or I can put it on the Elmo here. 218 is the letter that  
11 Mr. Shkreli wrote to Mr. Schmidt from the SEC. I know we  
12 talked about it on direct examination, I want to go over a few  
13 parts; the highlighting is mine.

14 In this letter Mr. Shkreli has made a decision to  
15 try to share certain information with the SEC, correct?

16 A Correct.

17 Q He wrote this information in this letter. And he  
18 volunteers to Mr. Schmidt that he, "decided to end the MSMB  
19 limited partnerships with the closure targeted for the end of  
20 this November or next month December," you see that?

21 A Yes.

22 Q He explains that, "His colleagues and he are going to  
23 focus on a growth of his MSMB incubated biotechnology  
24 business, Retrophin, for which a going public transaction is  
25 being planned after this production." Do you see this?

Braconi - Cross - Agnifilo

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1 A Yes.

2 Q He explains, "Calculating the MSMB group Assets Under  
3 Management is an interpretive task," you see how he writes  
4 that there? I'm now on the next bullet paragraph.

5 A I see it.

6 Q "As with any fund," correct?

7 A Okay.

8 Q He says, "MSMB has managed no less than five limited  
9 partnerships and two managed accounts since its inception, of  
10 which five of seven have been discontinued." Do you see that?

11 A Yes.

12 Q He goes on to say that, "Our most successful and largest  
13 effort has been the private equity endeavor, which led to the  
14 creation of Retrophin LLC, which is restructured as Retrophin  
15 Incorporated. Retrophin's valuation has fluctuated between  
16 20 million and 80 million, and has always been an  
17 MSMB-majority owned company." Do you see that there?

18 A Yes.

19 Q "Because this business represents most of the recent  
20 activities of MSMB, one may choose to include it in a  
21 calculation of AUM, as a private equity company or fund may  
22 do," he writes that as well, correct?

23 A Correct.

24 Q And then he says, "MSMB has had a long-term advisory  
25 relationship with Josiah T. Austin, a private investor for

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1 many years. This advisory relationship represented the bulk  
2 of MSMB's activities, inclusion of these efforts but also  
3 effect the AUM calculation." You see how he writes that  
4 there?

5 A I don't see it, but I remember.

6 Q Because I didn't let you see it. I got it.

7 A It's there.

8 Q Now I'm letting you see it. There you go.

9 So he writes all these things. He's talking in this  
10 letter on two separate occasions about AUM, or Assets Under  
11 Management; is that correct?

12 A That's correct.

13 Q Are you aware of whether or not the Securities & Exchange  
14 Commission has a definition for Assets Under Management?

15 A I'm not aware.

16 Q You're not aware how the SEC describes the Assets Under  
17 Management?

18 A No.

19 Q And are you -- do you have any awareness as to whether  
20 one's Assets Under Management can be money rather investments,  
21 advice that you give to someone when you know that person is  
22 relying on that investment advice?

23 A Can you repeat that?

24 Q Absolutely can. Do you know if Assets Under Management  
25 can be considered to be giving investment advice when you know

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1 that the person is relying on your investment advice in the  
2 buying and selling of securities?

3 A I do not know.

4 Q Okay. Do you know if Assets Under Management could be  
5 helping someone build securities position in a certain stock  
6 or set of stocks, do you know?

7 A I don't know.

8 Q Okay. Fair to say that at this point you've been working  
9 on this case for how long?

10 A A little less than four years, I think.

11 Q You know everything there is to know about this case;  
12 fair to say, so to speak?

13 MS. KASULIS: Objection.

14 THE COURT: Sustained.

15 BY MR. AGNIFILO:

16 Q You know a lot about this case.

17 A I agree.

18 Q You're aware, because you sat through the trial, that my  
19 client had a lot of dealings with someone named Josiah Austin,  
20 who he mentions in the letter, correct?

21 A Correct.

22 Q And you're aware that Josiah Austin at one point was the  
23 top shareholder, had the most shares, in Chelsea Therapeutics?

24 A I remember that.

25 Q You're aware that my client introduced Josiah Austin to

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1 Chelsea Therapeutics, correct?

2 A I believe that's correct.

3 Q You're aware that Lindsay Rosenwald was the founder of  
4 Chelsea Therapeutics?

5 A That's correct.

6 Q You know my client has an investing relationship with  
7 Lindsay Rosenwald?

8 A Correct.

9 Q Had an investing relationship with Josiah Austin,  
10 correct, at the time through Elea Capital?

11 A I believe that's correct.

12 Q And I think that, correct me if I'm wrong, Mr. Austin  
13 testified that at its peak the value of his Chelsea  
14 Therapeutics holdings was \$30 million, correct?

15 A I don't recall.

16 Q All right, okay. Do you recall if his testimony also was  
17 that the peak value that he had invested with Elea Capital was  
18 \$5 million?

19 A I don't recall.

20 Q That's fine, that's fine.

21 I'm going to show you the second page of that same  
22 document, it's a list, a schedule of funds managed by MSMB.

23 This is also in evidence also as Government's Exhibit 218.

24 You see there a list of different MSMB entities here, correct?

25 A Correct.

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1 Q One of them is MSMB Consumer LP, correct?

2 A Correct.

3 Q And it indicates on this list that at its peak MSMB  
4 Consumer LP had \$600,000 at its peak, correct?

5 A Correct.

6 Q All right. And do you know based on your investigation  
7 of Tim Pierotti at some point he was managing this particular  
8 fund, MSMB Consumer?

9 A Yes.

10 Q And in your investigation, did this fund, MSMB Consumer,  
11 ever have \$4.5 million in it?

12 A I don't know the amount. I believe it was possibly more  
13 than \$600,000.

14 Q Do you know if it was anywhere more than a million  
15 dollars? If you know?

16 A I can't recall exactly what it was.

17 Q Okay. You have no recollection of it being \$4.5 million?

18 A The only thing I recollect is Rick's Cabaret investment  
19 in there.

20 Q So you don't remember.

21 A The amount that it was, no.

22 Q Fair enough. I think also as part of that same exhibit  
23 Mr. Shkreli sent this investment summary to the SEC as well as  
24 part of that same exhibit. You see that there?

25 A Yes.

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1 Q This is the investment summary as of 6/30/2012, correct?

2 A Correct.

3 Q And he sent this along with the letter and along with the  
4 list of MSMB entities to Mr. Schmidt at the SEC, right?

5 A Correct.

6 Q Do you know if at the point that Mr. Shkreli sent this  
7 and the list of MSMB entities and the letter, if he was  
8 required by the SEC to do that?

9 A No, I don't know.

10 Q I'm going to show you another exhibit, it's Government's  
11 Exhibit 261, I'll show you the e-mail first. The e-mail  
12 starts with an e-mail from Evan Greebel to Martin Shkreli. It  
13 goes down, there is reference to the fact that Evan Greebel  
14 had a conversation with Lindsay Rosenwald and wants 80,000  
15 total and not less. Do you remember this exhibit?

16 A Yes.

17 Q I think the second page of that exhibit relates to a  
18 fairly lengthy e-mail that -- this is also in evidence, same  
19 exhibit -- that Mr. Shkreli sent to Mr. Stanfield who I  
20 believe is Mr. Rosenwald's attorney; fair to say?

21 A Yes.

22 Q I'm going to read this. You tell me if I'm reading  
23 correctly.

24 "Dear Mr. Stanfield, the so-called conversion of  
25 Dr. Rosenwald's limited partnership stake discussed in your

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1 letter was affirmed in a conference call between Dr. Rosenwald  
2 and Mr. Shkreli" -- talking about himself -- "in  
3 November 2012. Dr. Rosenwald indicated his willingness to  
4 convert his entire investment into Retrophin shares and  
5 round-up his investment to \$200,000. To date we have not  
6 received this remaining amount. Furthermore, MSMB Capital  
7 since its founding gravitated towards a private equity style  
8 form of investing, specifically concentrated on Retrophin. We  
9 at all times acted in the best interest of our limited  
10 partners in accordance with PMMs OMs LPA, et cetera. The only  
11 remaining security in the limited partnership Dr. Rosenwald  
12 invested in was Retrophin stock. Accordingly he has received  
13 a distribution of stock in conjunction with the dissolution of  
14 the partnership and his matter is fully and legally resolved  
15 without discussion." You see that it goes on and on. He  
16 explained at some length his position to Lindsay Rosenwald's  
17 lawyer, correct?

18 A Correct.

19 Q Fair to say on direct examination you read snippets of  
20 different testimony and statements that Mr. Shkreli gave at  
21 different points in time?

22 A That's correct.

23 Q For instance, I think you read, if I remember correctly,  
24 six snippets of a statement that he gave to FINRA during an  
25 arbitration on May 15, 2012. I think that's how you started



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1 your testimony yesterday?

2 A I don't know if it was six, but yes, the FINRA testimony,  
3 yes.

4 Q I might have counted wrong.

5 A I don't know.

6 Q Right. Fair to say, these are six snippets from a very  
7 lengthy transcript, correct?

8 MS. KASULIS: Objection, Your Honor.

9 MR. AGNIFILO: If you know.

10 THE COURT: Sustained.

11 Q You didn't tell the jury everything that Mr. Shkreli said  
12 to FINRA on May 15, correct?

13 MS. KASULIS: Objection.

14 THE COURT: Sustained.

15 BY MR. AGNIFILO:

16 Q What was the proceeding that these statements came from?

17 A I believe he was testifying in front of FINRA, being  
18 deposed.

19 Q It was in relation to the Merrill Lynch settlement, the  
20 Merrill Lynch arbitration?

21 A I think that's correct.

22 Q Is it your understanding that he was giving testimony in  
23 connection with the Merrill Lynch arbitration?

24 A Yes.

25 Q And did you ever see the transcript for the Merrill Lynch

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1 arbitration?

2 A I don't think I read the whole thing.

3 Q Okay. It's fairly lengthy, correct?

4 MS. KASULIS: Objection.

5 THE COURT: I'll overrule it, if you know.

6 A I don't know.

7 Q Okay. He also -- you indicated I think that you put in  
8 three statements from his SEC testimony on August 7, 2013, as  
9 part of your direct examination. Do you remember that?

10 MS. KASULIS: Your Honor, could we please have a  
11 sidebar?

12 THE COURT: All right.

13 (Continued on the next page.)

14 (Sidebar conference.)

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## Sidebar Conference

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1 MS. KASULIS: Your Honor, I think this is entirely  
2 improper to act as if we picked six statements out of this  
3 lengthy, lengthy transcript with respect to the SEC and the  
4 FINRA. There are obviously reasons why, there are limitations  
5 as to what can be admitted and put before the jury. So that  
6 is the concern.

7 MR. AGNIFILO: I didn't say you did anything wrong.

8 MS. KASULIS: That's our concern with this  
9 implication that we picked six statements of Mr. Shkreli and  
10 then everything else is not before the jury. And there are  
11 obviously reasons for that, that have to do with the rules of  
12 evidence, things along those lines. Not that the Government  
13 picked these six particular statements out of an entire  
14 transcript.

15 THE COURT: There is an impression being made that  
16 they are cherry-picking out of this big universe. I think  
17 that it could create --

18 MR. AGNIFILO: I'll ask a different --

19 THE COURT: -- it could create an impression that is  
20 not accurate.

21 MR. AGNIFILO: That's fine.

22 THE COURT: It also will cause the jury, I think, to  
23 speculate about what haven't they shown us. I think we need  
24 to be very careful with this type of questioning.

25 MS. SMITH: We should do a instruction. There is

## Sidebar Conference

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1 obviously a lot of evidence, there is a lot of additional  
2 e-mails between Mr. Shkreli and Mr. Greebel that aren't in.  
3 There is other statements that haven't been put in from  
4 Mr. Shkreli, right. The impression that is being left is that  
5 we've somehow chosen to only put certain things in front of  
6 the jury. In fact, it's not entirely our choice. Same thing  
7 with the defense, they've chosen to put certain things in and  
8 not other things, which is entirely proper. I'm concerned  
9 about the suggestion that we're the ones that kind of made the  
10 decision.

11 THE COURT: How about if I say both sides are  
12 entitled to put, to offer evidence.

13 MR. AGNIFILO: But we're not actually not.

14 THE COURT: So the Government is entitled to offer  
15 evidence, but the jury should not speculate about the reasons  
16 why certain evidence was not offered. It may be because the  
17 evidence is not admissible under our rules, which is true.

18 MS. KASULIS: Yes.

19 MS. SMITH: That's fine.

20 THE COURT: Okay. Are we in agreement.

21 MR. AGNIFILO: That's fine.

22 MS. SMITH: Yes, Judge.

23 MR. AGNIFILO: Or other reasons, that's not the only  
24 reason. I don't want to suggest -- there is nothing wrong  
25 with picking, but they did pick.

Sidebar Conference

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1 MS. SMITH: Then there is no other reason to say  
2 that, other than to provide the implication. You can say for  
3 other reasons as well.

4 THE COURT: Okay.

5 MR. AGNIFILO: That's fine.

6 MS. SMITH: We had extensive litigation over which  
7 statements were permissible and which weren't.

8 MR. AGNIFILO: Right.

9 (End of sidebar conference.)

10 (Continued on the next page.)

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1 (In open court.)

2 THE COURT: I will instruct the jury at this time.

3 Members of the jury, the Government is entitled to  
4 present evidence to you for your consideration, but you should  
5 not speculate as to the reasons why certain evidence is not  
6 being presented. There may be rules of evidence or other  
7 reasons why certain evidence is not before you. So don't  
8 speculate again. You are deciding this case based only on the  
9 evidence presented at the trial. Thank you.

10 You may proceed.

11 MR. AGNIFILO: Thank you, Judge.

12 BY MR. AGNIFILO:

13 Q Now at one point on January 29, 2015, my client came to  
14 the United States Attorney's Office, correct?

15 MS. KASULIS: Objection.

16 MR. AGNIFILO: I'm not getting into anything that  
17 was said.

18 MS. KASULIS: It's also beyond the scope,  
19 Your Honor.

20 THE COURT: There is an objection, if you would like  
21 to make a proffer I can hear you; otherwise, I'm inclined to  
22 sustain the objection.

23 MR. AGNIFILO: I'll make a proffer.

24 THE COURT: Excuse us again, ladies and gentlemen.

25 (Continued on the next page.)

Sidebar Conference

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1 (Sidebar conference.)

2 MR. AGNIFILO: I'm not looking to get into -- it's  
3 a fact that happened. He came down to the United States  
4 Attorney's Office. He was there. He answered questions and  
5 then left.

6 MS. SMITH: I'm sure you want to put in that he  
7 didn't come with a lawyer, and the implication that he did  
8 that IS because he's innocent. That's beyond the scope of  
9 charges in the case. It wasn't brought up in direct. We  
10 didn't put in any statements.

11 MR. AGNIFILO: We have to call the case agent to put  
12 that in?

13 MS. SMITH: How is it relevant?

14 MR. AGNIFILO: For what you just said.

15 MS. SMITH: So he can take the stand.

16 THE COURT: It pretty much contradicts the  
17 instruction I just gave. You're putting before the jury a  
18 scenario where Mr. Shkreli came to the United States  
19 Attorney's Office to talk and they have haven't heard anything  
20 about this.

21 MR. AGNIFILO: But I think, in context, I'm showing  
22 if people want to talk to him, he talks to them. He's helpful  
23 to the SEC. He gave a full explanation to Rosenfeld's lawyer.  
24 I think that evidence of someone doing that is relevant, it's  
25 plainly relevant.

Sidebar Conference

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1 THE COURT: Are you potentially opening the door to  
2 have those statements come in?

3 MR. AGNIFILO: There are so many of them, they  
4 choose not to.

5 MS. SMITH: We have many, many more.

6 MR. AGNIFILO: They gave notice of putting them in,  
7 then they chose not to. Probably they didn't want me to do  
8 exactly what I'm doing, or whatever reasons.

9 I'm not getting into the statement. They gave us  
10 notice of three or four statements from the section, which  
11 they chose not to ask about.

12 MS. SMITH: I don't see how it's remotely relevant.  
13 I agree if we put in the statements it might have been. But  
14 it's not. It's really just giving the implication, without  
15 him having to take the stand, that he feels he has nothing to  
16 hide. He had lawyers for the SEC, you mentioned that.

17 MR. AGNIFILO: I can mention any of those. Listen,  
18 part of our theme, which we have started from the beginning,  
19 is he does things his own way. He just does. That is  
20 critical for our defense.

21 MS. SMITH: I think we have to look at --

22 THE COURT: It's after the fact.

23 MR. AGNIFILO: He's still the same person. The  
24 leopard doesn't change its spots.

25 THE COURT: I think the charged conduct is between



Sidebar Conference

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1 certain dates. What you're getting into is post, after the  
2 end of the charged conduct, looking at his conduct since then.  
3 The concern is it just creates more speculation on the part of  
4 the jury about what did he say.

5 MS. SMITH: Not to mention, after he was arrested he  
6 chose not to speak, which is nothing we can comment on. He  
7 chose not to give a statement.

8 MR. AGNIFILO: There is a Fifth Amendment, which  
9 protects one and not the other.

10 MS. SMITH: If you're going to consider doing it, if  
11 Your Honor is going to consider it, I think we need to  
12 research it. I think it's improper, but I don't have --

13 THE COURT: It is outside the scope of direct.  
14 That's a fundamental parameter.

15 MS. KASULIS: And that's true. If they are going to  
16 argue that they had this motive, then agents could testify  
17 that they didn't think Mr. Shkreli was credible whatsoever  
18 during that.

19 MR. AGNIFILO: I don't think that's competent  
20 testimony; one's a fact.

21 MS. KASULIS: We believe he was lying.

22 MR. AGNIFILO: I'll move on. That's fine.

23 THE COURT: So you'll withdraw the question?

24 MR. AGNIFILO: I'll withdraw the question.

25 (End of sidebar conference.)

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1 (In open court.)

2 MR. AGNIFILO: In light of the objection,  
3 Your Honor, I withdraw the question.

4 THE COURT: All right. Thank you. If there was an  
5 answer to the question, the jury should disregard it.

6 BY MR. AGNIFILO:

7 Q I want to direct your attention to what is admitted into  
8 evidence as Government's Exhibit 704, this is a chart that you  
9 made, correct?

10 A Correct.

11 Q And it's MSMB Capital investor statements versus banks  
12 records?

13 A Correct.

14 Q You said the blue column is MSMB Capital investor  
15 statements?

16 A Yes.

17 Q And MSMB Capital bank ending balance is the red column,  
18 correct?

19 A That's the bank and the brokerage statements.

20 Q So here it just says bank ending balance, because it's  
21 bank and brokerage statements.

22 A Yes.

23 Q That's the case also with 705?

24 A Yes.

25 Q 705 the red is bank and brokerage statements?

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1 A Correct.

2 Q And I think I asked you yesterday for both of these  
3 documents, the value of Retrophin was or was not included as  
4 part of the red column?

5 A Not included.

6 Q Not at all?

7 A No.

8 THE COURT: Just a clarification, are you talking  
9 about the MSMB Capital chart or the MSMB Healthcare?

10 MR. AGNIFILO: For both of them. Let me go one by  
11 one.

12 Q So in regard to 705, which is the MSMB Healthcare chart,  
13 was the value of Retrophin included as part of the red column,  
14 the MSMB Healthcare bank ending balance column?

15 A No.

16 Q And now in regard to exhibit 704, was the value of  
17 Retrophin included as part of the red column?

18 A No.

19 Q Now, at some point there was investment by third-party  
20 investors into Retrophin, correct?

21 A Third-party investors?

22 Q At one point, for instance, Mr. Richardson invested in  
23 Retrophin, correct?

24 A Correct, so yes.

25 Q In addition to Mr. Richardson there were other people as

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1 well, correct?

2 A Yes.

3 Q Now, I want to take you back to your chart for a second,  
4 I'll take 704 as an example. 704 is the bank and the  
5 brokerage records, the money in the bank and brokerage  
6 records, correct?

7 A Correct.

8 Q I want to show you what has been admitted in evidence as  
9 Government's Exhibit 802.

10 MS. KASULIS: 80-2.

11 MR. AGNIFILO: I'm sorry, 80-2.

12 BY MR. AGNIFILO:

13 Q So this happens to be Sarah Hassan's performance estimate  
14 for March 2011, correct?

15 A Correct.

16 Q You see under account value it says, "You invested  
17 \$300,000 on 1/17/2011, the value of this investment is now  
18 approximately \$326,778 gross of fees. These values are  
19 estimates only and inaccuracies may exist."

20 A That's correct.

21 Q No representation on this statement as to the amount of  
22 funds in the bank and brokerage statement, correct?

23 A That's correct.

24 Q So in other words, at no point does Mr. Shkreli say in  
25 this statement the amount of funds in the bank statement and

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1 the brokerage statement is a certain amount, correct?

2 A Correct.

3 Q He says the value of this investment is now \$326,778  
4 gross of fees?

5 A That's correct.

6 Q Just by way of example, I'm showing you the next month's  
7 statement 80-3 in evidence, it's April 2011. It's the same  
8 language, the number is different, but the same language, "The  
9 value of this investment is now approximately \$320,115 net of  
10 all fees," correct?

11 A Correct.

12 Q Now, and this is Government's Exhibit 5, it's the private  
13 offering memorandum that was given to Ms. Hassan, who's two  
14 statements we just looked at. It's page seven of that PPM.  
15 It says on the bottom, "Restricted securities. The  
16 partnership may invest in so-called restricted securities i.e.  
17 securities at which the public re-sale is currently restricted  
18 under the Securities Act of 1933 as amended, the Securities  
19 Act, and which are not immediately convertible into freely  
20 tradeable securities," correct?

21 A Correct.

22 Q And that was a common provision in the PPMs correct?

23 A I think we saw it in multiple.

24 Q I think we did. And so there is no doubt that the value  
25 of the investment could be beyond the brokerage statement and

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1 the bank statement, correct?

2 MS. KASULIS: Objection.

3 THE COURT: Sustained.

4 Q Did you when you made this chart, when you made 705 or  
5 704, either one, you said already you did not allow for the  
6 any value of a illiquid or restricted security?

7 MS. KASULIS: Objection.

8 THE COURT: Sustained.

9 Q You only allowed for bank statements and brokerage  
10 statements?

11 A Yes, that's what I used.

12 Q Now, at some point, I'll look at 705, in July of 2012 the  
13 bank statements and the brokerage statements have very little  
14 funds in them correct, \$111,939, correct?

15 A That's correct.

16 Q You're aware that several MSMB Healthcare investors made  
17 a great deal of money from their investments, correct?

18 MS. KASULIS: Objection.

19 THE COURT: Overruled.

20 A Can you repeat that again?

21 Q Yes. You are aware that several of the MSMB Healthcare  
22 investors who testified at this trial made a great deal of  
23 money from their investment, correct?

24 A I think it's from settlement agreements and other  
25 agreements, yes.

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1 Q And so this red column here does not reflect the amount  
2 of money that these people made; fair to say?

3 A Correct.

4 Q Now at MSMB Capital, you're aware that several of the  
5 people who testified here at the trial made a great deal of  
6 money with their investments with Mr. Shkreli who initially  
7 invested in MSMB Capital, correct?

8 MS. KASULIS: Objection.

9 THE COURT: You'll have to rephrase.

10 Q A number of MSMB Capital investors testified at this  
11 trial, correct?

12 A That's correct.

13 Q And they testified that they made a great deal of money  
14 from their investment with Mr. Shkreli, correct?

15 A I think it's, again, the settlement agreements they made  
16 money as a result.

17 Q They made a lot of money?

18 A I think that's fair, yes.

19 Q Are you familiar with someone named John Neal?

20 A Yes.

21 Q Did John Neal get a settlement or consulting agreement?

22 A I don't recall.

23 Q You don't recall?

24 A No.

25 Q Do you know if he made a great deal of money through his

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1 investment as well?

2 A I don't know how much he made off of his investment. We  
3 might have the documents; I don't know off the top of my head.

4 Q At some point Retrophin started to grow; fair to say?

5 A Yes.

6 Q Retrophin started to grow, in part, because people  
7 started to, third-parties, started to invest in Retrophin,  
8 correct?

9 A Yes.

10 Q I'm going to show you what is marked in evidence --  
11 Defense Exhibit DX1211, an e-mail from Brent Saunders on  
12 April 20, 2011, to Thomas Koestler, Bob Bertolini, Fred  
13 Hassan. And the subject is "Retrophin subscription details,"  
14 do you see that?

15 A Yes.

16 Q And Brent writes to Fred and Bob. "I'm writing to  
17 provide details regarding the investment in Retrophin, which  
18 is working on a treatment for Muscular Dystrophy. This is a  
19 high-risk investment; however, I believe Tom Bob and I are all  
20 in agreement that it is a good investment from both a business  
21 perspective and our ability to help fund a treatment for this  
22 horrible disease. If you all agree, I need to provide your  
23 contact of information to Martin's lawyer so he can create a  
24 specific subscription document for you. Below are the  
25 versions for me. I plan to invest \$200,000. We have the



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1 option of putting in anywhere from zero to \$250,000 each.

2 Please confirm that you are okay with me sending your e-mail  
3 to Martin." Do you see that? Signed by Brent Saunders.

4 A Yes.

5 Q Then Fred Hassan writes back, "Dear Brent, Bess has  
6 cleared the investment in the Muscular Dystrophy project.  
7 Sarah will be proceeding with it early next week. From Fred  
8 Hassan," correct?

9 A Correct.

10 Q We were of talking about certain investments in  
11 Retrophin. To make it a little bit easier I'm going to refer  
12 you to Government's Exhibit 213 and 213, which is a Retrophin  
13 Capitalization Table from July 31, 2011. That's the first  
14 page of it, so you can see the page, then it continues on the  
15 second page. You see there is a number of investments --  
16 Steve Richardson indicates he made an investment on April 20,  
17 2011, in the amount of \$50,000. And for \$50,000 he bought  
18 2,500 units of Retrophin, correct?

19 A It looks like it, yes. If you move over a little bit.

20 Q Sure.

21 A Yes.

22 Q On April 28, 2011, Robert Bertolini invested \$200,000.  
23 For \$200,000 he got 10,000 units of Retrophin, correct?

24 A Correct.

25 Q On April 28, 2011, Dynagrow Capital LLP invested

Braconi - Cross - Agnifilo

5000

1 \$150,000. For that amount it got 7,500 units of Retrophin,  
2 correct?

3 A Correct.

4 Q And to Koestler on May 4, 2011, invested \$200,000. For  
5 that got 10,000 units of Retrophin, correct?

6 A Correct.

7 Q And you heard testimony yesterday from Mr. Barnett from  
8 the valuation company talking about the last sale principal?

9 A Yes.

10 Q When these four individuals invested in Retrophin, did  
11 you reflect that in either of your charts?

12 A The charts just involved the investor statements.

13 Q Okay. So that when these four people invested in  
14 Retrophin, and as we just saw, they all invested at the price  
15 point of \$20 per share, that you did not reflect that in your  
16 chart?

17 A That would be separate. They weren't investors. I think  
18 that's separate Retrophin investment as opposed to MSMB  
19 Healthcare.

20 Q You said you didn't value Retrophin in your chart at all,  
21 correct?

22 A In the red bars, that's correct.

23 Q So there was no change in your chart when these four  
24 people invested in Retrophin in these amounts at \$20 a share?

25 A That's correct.

Braconi - Cross - Agnifilo

5001

1 Q Just to go back to the same exhibit, is it your  
2 understanding that RTA LLC is Ron Tilles, do you know?

3 A No.

4 Q Are you familiar with, this is Government's Exhibit  
5 122-6, a Retrophin presentation that Mr. Shkreli made in  
6 March 2011?

7 A Yes.

8 Q He explains in this presentation that in his executive  
9 summary, "Retrophin is a biotechnology company dedicated to  
10 developing drugs for rare and life-threatening diseases.  
11 Specifically our mission is to become the first company to  
12 receive FDA approval for the Duchenne Muscular Dystrophy  
13 drug." Do you see that?

14 A Yes.

15 (Continued on next page.)

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*Braconi - cross - Agnifilo*

5002

1 CROSS-EXAMINATION (CONT'D.)

2 BY MR. AGNIFILO:

3 Q Okay. And at the time there was an idea for a particular  
4 drug called RE-001, right?

5 A Yes.

6 Q All right. And he explains here: "RE-001 is our main  
7 asset in pre-clinical development for Duchenne muscular  
8 dystrophy.

9 We plan to move RE-001 into a phase I clinical trial  
10 in early 2012 pending successful IND-enabling studies.

11 RE-001 replaces the missing protein that causes  
12 Duchenne muscular dystrophy, dystrophin, by providing a  
13 recombinant supply of a very similar protein (called utrophin)  
14 linked to a cell-penetrating moiety which allows for delivery  
15 of protein into the cell where it's needed for structural  
16 support integrity."

17 That's sort of the pipeline, the business product  
18 that Retrophin is looking to bring to market, correct?

19 A It appears so, yes.

20 Q Okay. All right.

21 He includes this diagram with how this would work  
22 and he says: "Dystrophin anchors the cell membrane to these  
23 filaments and this provides cell stability," right, that's  
24 what he says here?

25 A Correct.

*Braconi - cross - Agnifilo*

5003

1 THE COURT: Sorry, "he" being Mr. Shkreli?

2 MR. AGNIFILO: Yes, Mr. Shkreli.

3 Q It is your understanding that Mr. Shkreli wrote this  
4 document?

5 MS. KASULIS: Objection.

6 THE COURT: Sustained.

7 MR. AGNIFILO: If he has an understanding -- I'll  
8 withdraw it.

9 THE COURT: You want to ask him who wrote it, if he  
10 knows.

11 Q We'll go to the first page, 1226, Retrophin, Inc., Martin  
12 Shkreli, interim CEO March 2001; right, that's what it says?

13 A That's what it says.

14 Q Now, you said that you didn't reflect -- you handled your  
15 charts differently based on whether the entity was MSMB  
16 Capital as opposed to MSMB Healthcare, correct?

17 MS. KASULIS: Objection.

18 Q The charts are different?

19 MS. KASULIS: Objection.

20 THE COURT: Sustained. Reframe.

21 MR. AGNIFILO: Yes, Judge, I'll do that.

22 Q Chart 704 is MSMB Capital, right?

23 A Correct.

24 Q All right. 705 is MSMB Healthcare, right?

25 A Yes.

*Braconi - cross - Agnifilo*

5004

1 Q Okay. Why do you do two different charts?

2 A It's two different funds with different sets of  
3 investors.

4 Q Okay. Fair to say the funds had a substantial amount of  
5 overlap, correct?

6 MS. KASULIS: Objection.

7 THE COURT: Sustained.

8 Q Did they have the same employees?

9 A Yes.

10 Q Okay. Did they have the same office?

11 A Yes.

12 Q Did they have the same computers?

13 MS. KASULIS: Objection.

14 Q To your knowledge?

15 THE COURT: The objection is overruled.

16 If you know?

17 THE WITNESS: I don't know.

18 Q And were they started by the same person?

19 A Yes.

20 Q Martin Shkreli?

21 A Yes.

22 Q And do you know if there was overlap between Retrophin  
23 and the MSMB entities?

24 A What do you mean by overlap?

25 Q Well, let me show you Government Exhibit 509 in evidence.

*Braconi - cross - Agnifilo*

5005

1           Okay. This is Government Exhibit 509, this is a  
2 Chase Business Signature Card account, Retrophin LLC, business  
3 address care of MSMB, 330 Madison Avenue, Sixth Floor; right,  
4 you see that?

5       A     Correct.

6       Q     All right. So, at least in terms of its Business  
7 Signature Card, the Chase Business Signature Card address,  
8 Retrophin is using an address care of MSMB, right?

9       A     Yes.

10      Q     All right. And Retrophin was founded by Mr. Shkreli as  
11 well, correct?

12      A     Yes.

13      Q     All right. I want to go through some e-mails that you  
14 went through earlier today. I'm going to start with  
15 Government's Exhibit 285.

16           All right. 285 is an email from Martin Shkreli to  
17 Evan Greebel, correct?

18      A     Correct.

19      Q     All right. And in it Mr. Shkreli says: "A couple of  
20 nits. In Section 1 the interest is MSMB Capital Management  
21 LP"; you see he says that?

22      A     Yes.

23      Q     Next: "It should contemplate releasing any liability  
24 from Retrophin and that's one of the reasons or benefits of  
25 the exchange." You see that, right?

*Braconi - cross - Agnifilo*

5006

1 A Yes.

2 Q Here he's telling Evan Greebel in regard to a settlement  
3 agreement to make sure that Retrophin is released, correct?

4 A Yes.

5 Q All right. And I think that just before, your last few  
6 questions on direct examination you went through certain  
7 settlement agreements, correct?

8 A Yes.

9 Q And there are certain releases in those settlement  
10 agreements, right?

11 A That's correct.

12 Q And the releases release Shkreli personally, correct?

13 A Correct.

14 Q Right, they release the MSMB entities as a group?

15 A Correct.

16 Q And they release Retrophin?

17 A Correct.

18 Q All right. And here is Shkreli telling Greebel to  
19 release from liability Retrophin and that's one of the reasons  
20 or benefits of the exchange, correct?

21 A Correct.

22 Q All right. And Greebel ends up drafting these settlement  
23 agreements, correct?

24 MS. KASULIS: Objection.

25 Q If you know?



*Braconi - cross - Agnifilo*

5007

1 THE COURT: Sustained.

2 Q Greebel sent them, I mean there's a number of e-mails,  
3 correct me if I'm wrong, of Greebel sending settlement  
4 agreements to the people receiving settlements, correct?

5 A I believe Evan sent some of the settlement agreements.

6 Q Okay. And did you see email traffic of drafts going back  
7 and forth between Evan and lawyers representing the people  
8 settling and getting the settlement agreements?

9 A I believe I did.

10 Q Okay. So, fair to say, based on your knowledge as the  
11 case agent, I mean you saw that Evan was playing a role in  
12 drafting these settlement agreements, fair to say?

13 A Yes.

14 Q All right. The next email I want to show you is  
15 Government Exhibit 112-7. I just want to show you one part of  
16 it.

17 112-7 down here is an email, it's from Evan Greebel,  
18 they're discussing a settlement and release agreement for  
19 Spencer Spielberg and Evan says: "It's not a lockup period,  
20 rather it is restriction under the federal securities laws.  
21 The stock is not registered and there are fact specific  
22 restrictions on transfer and the need for an opinion of  
23 counsel if you want to sell in less than a year," correct?

24 A I see that, yes.

25 Q So, Evan is giving a legal opinion on this particular

*Braconi - cross - Agnifilo*

5008

1 issue, correct, in this email?

2 MS. KASULIS: Objection.

3 THE COURT: Sustained.

4 Q All right. Evan is speaking about certain things under  
5 federal securities laws, correct?

6 MS. KASULIS: Objection, certain things.

7 THE COURT: Could you please be more specific.

8 MR. AGNIFILO: I can.

9 Q He's saying it is not a lockup period, rather it is a  
10 restriction under the federal securities laws, right, that's  
11 what he says?

12 A Correct.

13 Q All right. The other email I want to show you, I want to  
14 show you 113-10, it's in evidence. This is the email from  
15 Michael Lavelle, I think you talked about it earlier today.  
16 Let me get the whole thing on there, all right.

17 And Michael Lavelle asks a number of questions in  
18 this email, correct?

19 A Correct.

20 Q All right. He says: "On what basis was the reverse of  
21 MSMB into Retrophin agreed?" correct, "On what valuation  
22 basis?" he says that as well, you see that toward the bottom?

23 A Yes.

24 Q Okay. "Who approved it?" you see he says that?

25 A Yes.

*Braconi - cross - Agnifilo*

5009

1 Q "Did Retrophin raise private equity?" right?

2 A Right.

3 Q All right. Do you know if he was negotiating for a  
4 better deal in this email?

5 MS. KASULIS: Objection.

6 THE COURT: Sustained.

7 Q In this case you saw a number of instances where people  
8 like Lindsay Rosenwald, for instance, where people were  
9 negotiating for as many shares as they could get, fair to say?

10 MS. KASULIS: Objection.

11 THE COURT: Sustained.

12 Q Do you remember Lindsay Rosenwald -- do you remember  
13 correspondence with Lindsay Rosenwald's lawyer and Evan over  
14 Lindsay getting more shares than he was initially offered?

15 A I believe we went over that, the 80,000 shares?

16 Q Yes?

17 A Yes.

18 Q Okay. And at one point I think Mr. Kocher was  
19 threatening a possible lawsuit until he got what he deemed an  
20 agreeable settlement, fair to say?

21 MS. KASULIS: Objection.

22 THE COURT: Sustained.

23 Q Do you remember any evidence or did you see any e-mails  
24 concerning Kocher and a filing of a potential lawsuit against  
25 Martin or any MSMB entity?

*Braconi - cross - Agnifilo*

5010

1 A Yes.

2 Q All right. The next email I want to show you is 343,  
3 it's in evidence. And there are a few e-mails back and forth  
4 between Martin Shkreli and Evan Greebel, correct?

5 A Correct.

6 Q At one point -- let me start on the previous page because  
7 that's where it starts -- Evan says: "Do you want to raise  
8 the consulting agreement during the business update? It would  
9 be good to get board sign-off on it." Do you see Evan Greebel  
10 says that?

11 A Yes.

12 Q And Shkreli writes back: "No, another time, the board  
13 meeting going too long." Do you see that?

14 A Yes.

15 Q Do you know if they were actually on a board call as  
16 they're sending these e-mails to each other?

17 MS. KASULIS: Objection.

18 THE COURT: Sustained.

19 Q Do you know if there was a board meeting that day?

20 A I don't know.

21 Q I'm just going to show you a document to refresh your  
22 recollection. It's Defense Exhibit 6412.

23 (Pause while counsel confer.)

24 Q Special Agent Braconi, I'm just going to give you this  
25 document and the only purpose is to see if it refreshes your

*Braconi - cross - Agnifilo*

5011

1 recollection, so I'm going to hand it to you and then I'll ask  
2 you a question when you've had a chance to look at it.

3 (Pause.)

4 A Do you want me to read the whole --

5 Q No, no, you don't have to read it. The only question is  
6 does it refresh your recollection as to whether there was a  
7 board meeting on March 17, 2014?

8 MS. KASULIS: Objection.

9 THE COURT: Overruled.

10 You can answer, sir.

11 A I don't know if I had a recollection if there was a board  
12 meeting on this day but I see what it says on the document.

13 Q Okay. And so, just to go back to 343, and we're done  
14 with the document I just gave you; going back to 343, Martin  
15 says: No, another time, this board meeting going too long."  
16 He says that, right?

17 A Yes.

18 Q All right. And then Evan says: "Okay, that's -- that  
19 was why I asked should we delay Perlstein, Maccabim and  
20 Pierotti also? There is a board meeting on Thursday to go  
21 over the K," right, you see that?

22 A Correct.

23 Q And then Martin says: "Yeah, let's delay, I don't want  
24 to pollute their thinking on this very big subject," correct?

25 A Correct.

*Braconi - cross - Agnifilo*

5012

1 Q All right. So, you don't know if the very big subject is  
2 whatever is being discussed at the moment that Martin writes  
3 that, correct?

4 A I don't know, no.

5 Q All right. The next email I want to show you is 245 in  
6 evidence, again the highlighting is only mine.

7 And Martin Shkreli writes to Evan Greebel on  
8 December 28, 2012: "Amazing someone shorted 60,000 the last  
9 two days." Do you see that?

10 A Yes.

11 Q All right. And then Evan Greebel responds: "How will  
12 they cover?" Do you see that?

13 A Yes.

14 Q And then Shkreli says: "I think it might be Tim  
15 selling," correct?

16 A Correct.

17 Q There's no indication, no one says anything that they  
18 know who's selling, all that Shkreli says is, "I think it  
19 might be Tim selling," correct?

20 MS. KASULIS: Objection.

21 Q That's what it says?

22 THE COURT: Overruled.

23 A That's correct.

24 Q All right. The next email I want to show you is 248.  
25 It's two pages. I want to show you the first page first.

*Braconi - cross - Agnifilo*

5013

1 Well, it's actually the second page but it's the earlier  
2 email. Do you see it there?

3 A Yes.

4 Q This is what we've been referring to as the over-the-wall  
5 email?

6 A Yes.

7 Q It is basically Shkreli sending Greebel an email, it  
8 says: "Over-the-wall and confidential, Retrophin raising  
9 \$1 million in a convertible note followed by 10 million in a  
10 pipe, comments requested," correct?

11 A Correct.

12 Q And this same email, going by the heading here, seems to  
13 also have been sent to Pierotti and Biestek and Tom Fernandez  
14 and Mulleady and Vaino and Tilles, correct?

15 MS. KASULIS: Objection, misstates the document.

16 THE COURT: Sustained.

17 Q All right. Do you know if this email was sent to them as  
18 well?

19 MS. KASULIS: Objection.

20 THE COURT: Do you mean that particular email?

21 MR. AGNIFILO: The over-the-wall email, just the  
22 body of the email.

23 THE COURT: Do you mean this one reflected in the  
24 December 29th email or some other iteration of it?

25 MR. AGNIFILO: I don't know if there's any

*Braconi - cross - Agnifilo*

5014

1 indication that it's changed.

2 Q Do you know if an over-the-wall email was sent to these  
3 people?

4 MS. KASULIS: Objection, an over-the-wall email.

5 MR. AGNIFILO: Let me just -- I'll move on. All  
6 right.

7 Q Okay. Now, on the next page -- well, Greebel writes back  
8 and he says, and you can see it at the bottom here, Greebel  
9 writes back on December 29, 2012, 9:11 p.m., he says: "I like  
10 it although I do not like the subject line. I place at the  
11 end of the email. Also query whether you want to send it all  
12 identify who you are sending it to. Lastly I do not like the  
13 use of the word dire, prefer you say RTRX is undertaking the  
14 next step in order to raise funds for 13 R&D."

15 Do you see that he says that?

16 A Yes.

17 Q Okay. Then Shkreli responds: "What's wrong with the  
18 subject line?" right, you see he says that?

19 A Yes.

20 Q And Greebel says: "He will not open it once he sees it,"  
21 do you see that?

22 A Yes.

23 Q All right. And Shkreli then says: "The subject line is  
24 enough to put everyone OTW," correct?

25 A Correct.



*Braconi - cross - Agnifilo*

5015

1 Q And over-the-wall, is that what you understand that to  
2 mean?

3 A Yes.

4 Q And then Greebel says: "Interesting idea, I don't know  
5 what happens if he deletes and doesn't read it," right?

6 A Right.

7 Q Do you have any understanding of whether someone who has  
8 inside information can trade stock after receiving that  
9 information?

10 MS. KASULIS: Objection.

11 THE COURT: Sustained.

12 Q This over-the-wall email, this particular email that  
13 Shkreli sent here to Evan Greebel that we've just been  
14 discussing, Shkreli says the subject line is enough to put  
15 everyone over the wall, correct?

16 A Yes, he says that.

17 Q And then Greebel's response is he doesn't know what would  
18 happen if he deletes it and doesn't read it, correct?

19 A Correct.

20 Q All right. The next one I want to look at is  
21 Exhibit 249, I think we looked at it earlier today. This  
22 starts with, and I'm on 758, ending 758 on Government  
23 Exhibit 249, it starts at the bottom with Greebel saying:  
24 "Cancelled a portion, he held a portion" in an email he sends  
25 to Martin Shkreli on December 28, 2012, you see that, right?

*Braconi - cross - Agnifilo*

5016

1 A Yes.

2 Q And then Shkreli responds: "How much did he hold?" Do  
3 you see that there?

4 A Yes.

5 Q And then Greebel respond to Shkreli: "Someone had 30,000  
6 or so why? No one has freely trading stock though." Do you  
7 see that?

8 A Yes.

9 Q And then there's a discussion that goes back and forth  
10 between them that I think you covered earlier today. And then  
11 on December 28, 2012, Greebel sends Shkreli an email and he  
12 says: "Please make wed a reality for the wire, I'm out of  
13 time and when we discussed two weeks ago you assured mde (sic)  
14 that you would get me 100,000 by year end, last week you  
15 reiterated that and promised it since you got the money from  
16 Ron's guy. What happened to the other thing." Do you know if  
17 they've talking about legal feels here?

18 MS. KASULIS: Objection.

19 THE COURT: Sustained.

20 Q All right. Let's go to the next page. Greebel says to  
21 Shkreli: "For a variety of reasons that is not true is MSMB  
22 in position to pay any money, as we have discussed, Retrophin  
23 paid a portion of MSMB's bills at your direction," correct, do  
24 you see that there?

25 A Yes.

*Braconi - cross - Agnifilo*

5017

1 Q At the time Greebel was a partner at Katten Muchin,  
2 correct?

3 A Correct.

4 Q And Shkreli was his client?

5 MS. KASULIS: Objection.

6 THE COURT: Sustained.

7 Q And Retrophin or MSMB was his client?

8 MS. KASULIS: Objection.

9 THE COURT: Well, if the witness knows I'll allow  
10 him to answer it.

11 A I don't know who Evan Greebel's client was, whether it  
12 was Retrophin, MSMB or Shkreli.

13 Q Okay. All right.

14 Government Exhibit 251, we read this earlier today  
15 as well, and it starts with an email from Shkreli to Greebel,  
16 it says: "Hi Tim, I have decided to commence litigation  
17 against you for failing to honor the agreement we made in our  
18 office on December 10th. You agreed to work for MSMB growing  
19 and managing its investments and engaging with me on new  
20 opportunities. Instead you have failed to come to the office  
21 and will not even return my telephone calls. This is classic  
22 cut bait fraud. You cannot agree to do something with someone  
23 for a financial benefit, take the financial benefit and not  
24 perform the service. I'm going to notify your brokers of this  
25 pending litigation and request that they freeze your account

*Braconi - cross - Agnifilo*

5018

1 and all transfers associated. I am writing this action up in  
2 the Southern District of New York. Alternatively you can sign  
3 this agreement which I believe you will find to be an  
4 effective settlement. I will let you keep the funds you have  
5 received and will also give you \$40,000 to end this  
6 unfortunate situation for both of us. I am sorry our business  
7 relationship could not continue further and I wish you the  
8 best. If you have any questions please let me know. Signed  
9 Martin Shkreli."

10 That's what it says, right?

11 A Yes.

12 Q Okay. And then Greebel writes back: "Very risky given  
13 what you agreement was, could be opening a much bigger can of  
14 worms," correct?

15 A Correct.

16 Q Do you know if there was an SEC investigation going on at  
17 this time?

18 MS. KASULIS: Objection, generally an SEC  
19 investigation.

20 THE COURT: Do you want to reframe your question.

21 MR. AGNIFILO: Sure.

22 Q Just so we're clear, this email is dated January 2nd,  
23 2013, correct?

24 A Yes.

25 Q Looking at Government Exhibit 218, that's dated Sunday,

*Braconi - cross - Agnifilo*

5019

1 November 4th, 2012, and it's Mr. Shkreli sending certain  
2 documents to the SEC, correct?

3 A Correct.

4 Q All right. We're going to look at Government  
5 Exhibit 271. Government Exhibit 271 is an exhibit from --  
6 it's between -- here it is, 271, it is a series of e-mails  
7 between Greebel and Shkreli and I'm going to go the third page  
8 which ends 23 -- 3230. I'm just going to put it here so we  
9 can focus on this part. All right.

10 Now, here is an email from Greebel to Shkreli and it  
11 says: "Sources TF stock 100,000, 50 K to TF and 50 K to MS."  
12 Do you see that there?

13 A Yes.

14 Q Do you know who TF is?

15 MS. KASULIS: Objection.

16 Q Only if you know?

17 THE COURT: Overruled.

18 You may answer if you know.

19 A I believe it would be Tom Fernandez.

20 Q And do you know who MS would be?

21 A I believe it would be Martin Shkreli.

22 Q And then it says MB stock 50,000, 50 K to LR, would that  
23 be Lindsay Rosenwald?

24 A I think so.

25 Q Okay. RT stock 50,000, is RT Ron Tilles?

*Braconi - cross - Agnifilo*

5020

1 A I believe.

2 Q 25 K to Tom -- TK, would that be Tom Kessler?

3 A I think that would be fair.

4 Q Okay. And then 25,000 to MS and you think that would be  
5 Shkreli again?

6 A Yes.

7 Q All right. AV stock, do you think that's Andy Vaino?

8 A Yes.

9 Q 50,000 to Tom Kessler, correct?

10 A Correct.

11 Q Any idea who ES stock would be?

12 A No.

13 Q Ed Sullivan, no?

14 A It could be.

15 Q Okay. 30,000 to Lindsay Rosenwald -- 30,000 to LR,  
16 Lindsay Rosenwald, right?

17 A Right.

18 Q Would 20 K to SH, would that be Sara Hassan?

19 A I believe so.

20 Q All right. I want to look at Government Exhibit 351.  
21 351 starts with the email from Christine Giordano where she  
22 says, "Hi again," with the smiley face, right?

23 A Right.

24 Q And then attached to that is I believe a questionnaire,  
25 let me get the first page, a questionnaire for directors and

*Braconi - cross - Agnifilo*

5021

1 executive officers, do you see that?

2 A Yes.

3 Q All right. Okay. And we're going to look at question  
4 7.6.1, do you see that there?

5 A Yes.

6 Q All right. And the question says: "Have you been or are  
7 you presently the subject of any investigation by the SEC, the  
8 Commodity Futures Trading Commission, FINRA or any other  
9 regulatory or self-regulatory organization that could result  
10 in a finding of a violation of any federal or state securities  
11 or commodities laws?" Do you see that question?

12 A Yes.

13 Q One of the first possible answers: "I am not the subject  
14 of any investigation regarding violations of any federal or  
15 state securities or commodities laws," right?

16 A Right.

17 Q And there's the X next to that one, right?

18 A Yes.

19 Q This question doesn't ask about one's company, right, it  
20 asks if you, correct, that's what it says: Have you been or  
21 are you presently the subject of any investigation by the SEC,  
22 right, that's the question?

23 A That's what it says.

24 MR. AGNIFILO: Give me one second, Judge?

25 (Pause in the proceedings.)

*Braconi - redirect - Kasulis*

5022

1 MR. AGNIFILO: Special Agent Braconi, I want to  
2 thank you for your time.

3 I have no more questions at this point, Judge.

4 THE COURT: All right. Thank you.

5 Would you like to redirect Special Agent Braconi?

6 MS. KASULIS: Yes, Your Honor, thank you, briefly.

7 REDIRECT EXAMINATION

8 BY MS. KASULIS:

9 Q Special Agent Braconi, there was testimony on  
10 cross-examination to the effect there was questions about  
11 whether MSMB Capital and MSMB Healthcare Investors made money  
12 from their investments and you responded from the settlement  
13 agreements, can you please explain your response and that  
14 distinction that you were making?

15 MR. AGNIFILO: I object, Judge.

16 THE COURT: Overruled.

17 A What I was saying is that from their investment in MSMB  
18 Capital and Healthcare it is my understanding that there was  
19 no money left to distribute to these investors.

20 Q And so when you say they made money from the settlement  
21 agreements, what do you mean by that?

22 A I mean that they made an agreement with Martin to get  
23 paid through a settlement agreement, not for actual  
24 investments in MSMB Cap and MSMB Healthcare.

25 MS. KASULIS: One moment, Your Honor. (Pause.)



*Braconi - recross - Agnifilo*

5023

1 MS. KASULIS: No further questions, Your Honor.

2 THE COURT: Is there any recross?

3 MR. AGNIFILO: Yes, there is, Judge, give me one  
4 second.

5 RECROSS-EXAMINATION

6 BY MR. AGNIFILO:

7 Q Special Agent Braconi, I'm going to show you what's been  
8 marked in evidence as Government Exhibit 55. Okay.

9 Exhibit 55 is the settlement agreement with David Geller.

10 Do you see it up there?

11 A Yes.

12 Q And I'm going to look at where it says Payment Terms and  
13 under payment terms it says: The MSMB Entities or Retrophin  
14 individually or collectively, the payor, agree to deliver or  
15 cause to be delivered to releasor the total amount of three  
16 hundred thousand dollars, \$300,000, the payment, following the  
17 execution of this agreement and releasor previously received  
18 30,514 shares of common stock of Retrophin from the MSMB  
19 Entities, the shares, and collectively with the payment the  
20 liquidation amount as full and final satisfaction for any and  
21 all claims, obligations, liabilities, promises, agreements,  
22 controversies, damages, actions, causes of action, suits,  
23 judgments, rights, demands, losses, debts, contracts,  
24 commitments or expenses of every kind and nature, collectively  
25 claims," correct?

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1 A Correct.

2 Q That's what it says?

3 A That's what it says.

4 Q There's specific reference to the shares, right?

5 A 30,514 shares.

6 MR. AGNIFILO: Okay. One second.

7 (Pause.)

8 MR. AGNIFILO: I have nothing else. Thank you,  
9 Agent Braconi.

10 THE COURT: Is there any redirect?

11 MS. KASULIS: No, Your Honor.

12 THE COURT: All right, Special Agent, you are  
13 excused. Thank you.

14 (Witness steps down.)

15 THE COURT: At this time I'm going to excuse the  
16 members of the jury. I do have some good news which is that  
17 tomorrow will be a day off, we will be dealing with legal  
18 issues concerning the case.

19 We would ask you to please return on Thursday at  
20 9:00 and we will continue the trial at that time. Thank you  
21 very much for your ongoing attention. Please don't talk about  
22 the case. Please avoid all media coverage about the case and  
23 Mr. Shkreli.

24 (Jury leaves courtroom.)

25 THE COURT: All right. Have a seat. Did you want

1 to resolve some issues regarding exhibits now or tomorrow  
2 morning?

3 MS. KASULIS: We can do them now, that would be  
4 ideal, Your Honor.

5 THE COURT: Okay.

6 MS. KASULIS: Mr. Srinivasan has a list of the  
7 exhibits that we admitted subject to connection.

8 MR. BRAFMAN: Can I suggest we get the list tonight  
9 and we do it first thing in the morning because we need to  
10 pull them and we want to make sure we're both on the same  
11 page.

12 MS. KASULIS: That's fine, Your Honor.

13 THE COURT: I tell you what, we'll make a copy of  
14 the list submitted by the government and we will discuss this  
15 first thing in the morning.

16 Can you come in at 9:00?

17 MS. KASULIS: Yes, Your Honor.

18 THE COURT: All right.

19 Just so I can recap, tomorrow morning we will hear  
20 about the exhibits admitted subject to connection, then the  
21 government expects to rest.

22 MS. KASULIS: That's right.

23 THE COURT: And then I expect to hear Mr. Agnifilo  
24 and his Rule 29 motion. And then we will have a charging  
25 conference and then on Thursday we expect to hear summations.

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1 MS. KASULIS: Yes, Your Honor, that's the  
2 government's understanding of the proposed schedule.

3 MR. AGNIFILO: Thank you.

4 MR. BRAFMAN: Yes, Your Honor.

5 THE COURT: All right. Thank you.

6 MS. KASULIS: Thank you, Your Honor. We'll see you  
7 tomorrow morning.

8 THE COURT: See you tomorrow.

9 (Pause while counsel confer.)

10 MS. KASULIS: Your Honor, would it be all right if  
11 we started at 10:00 tomorrow?

12 THE COURT: Yes, 10:00.

13 (Time noted: 4:30 p.m.)

14 (Proceedings adjourned as above set forth.)  
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